יאירו עיניך במאור תורה ופניך יזהירו כזוהר הרקיע
MAY YOUR EYES SPARKLE WITH THE LIGHT OF TORAH...
...AND YOUR FACE SHINE LIKE THE BRIGHTNESS OF THE FIRMAMENT.

מספרי

JEFF PERRY-MARX

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JEWISH SELF-GOVERNMENT IN THE MIDDLE AGES

ABRAHAM BERLINER SERIES

JEWISH SELF-GOVERNMENT IN THE MIDDLE AGES

BY

RABBI LOUIS FINKELSTEIN

INSTRUCTOR IN TALMUD AT THE JEWISH THEOLOGICAL SEMINARY OF AMERICA

WITH A FOREWORD

BY

PROFESSOR ALEXANDER MARX

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TO

MR. LOUIS S. STROOCK

IN APPRECIATION OF HIS ENCOURAGEMENT

OF JEWISH LEARNING

THIS BOOK IS DEDICATED

PREFACE

The development of their communal life is one of the most interesting aspects of the history of the Jews in the middle ages. But no less important were their attempts to unite their various communities in country-wide organizations. The measure of success which these endeavors achieved is most remarkable; but aside from the immediate results attained, the spectacle of a persecuted people, in the midst of disunited principalities, governed by their petty barons "for revenue only," endeavoring to organize itself is eminently noteworthy. In the course of his studies on Rabbinical Synods, the writer was impressed by the fact that this phase of Jewish history had not received the attention it merited. It was from this point of view, therefore, that the prize essay submitted to the faculty of the Jewish Theological Seminary of America, under the title, "The Rabbinical Synods from the Eleventh to the Seventeenth Centuries and their Enactments" was developed into the present work. The new material that has been examined and the investigations that have been made into the stories of the conferences only increased one's wonder at the ability of the mediaeval Jew to view with such clarity the problems that confronted him.

The volume has grown to such proportions that it has been thought well to limit its scope to European communities, omitting the account of the organization of the Jews of Algiers and Morocco. The writer regrets this necessity not only because he feels that the history of these communities contains much of profound interest, but on the more personal ground that he was considerably helped in the reading of the Arabic texts used in the preparation of that part of the original essay by the late Professor Halper of the Dropsie College.

In order to complete the picture, the outlines of which are traced in the present volume, there would also be needed a comprehensive study of the local government of the Jews in the Middle Ages. Local ordinances were as common in Spain and Italy as were the countrywide synodal Takkanot in France and Germany. The writer has gathered a large amount of material on this subject, but has not yet crystallized it in book form. He hopes to be able to present these phases of the subject on some other occasion.

The synods which are discussed in this volume had no authority, other than that granted them voluntarily by the Jews of the various communities. None of them was recognized by the secular government, and only in Spain and Italy was there any relation at all between the rabbinical gatherings and the state. Nevertheless it is felt that the term "Self-Government" may properly be applied to the Jewish institutions of the Middle Ages, because whether *de jure* or *de facto*, the communities were autonomous entities. The decrees of the synods were obeyed, often with far greater rigor than those of the state government. The judiciary was organized to such an extent that courts of appeal were differentiated carefully from courts of original jurisdiction. The rights of the members of the communities as against the communities were defined with precision. Such an arrangement can hardly be called anything less than a system of "self-government."

It is probable that the division of the volume into parts, the first being devoted to a general account of the rise of synodal activity, and the second to an examination of the various document that have been preserved, will prove of help to the casual reader. Nevertheless it is hoped that even the lay reader, who may not be interested in the critical analysis of texts and in the explanation of difficult passages of the Talmudic sources, will endeavor to acquaint himself with the documents that are given there. It is with this in mind that virtually all the texts have been printed with translation. Though much of the material has previously appeared in print, none of it has hitherto been translated into English, and in nearly every

case new manuscript material has been available to provide better texts.

It is eminently fitting that this book should be the first in the series established in memory of the late Professor Abraham Berliner, who did so much to throw light on the history of the Jews in the Middle Ages, especially in his "*Geschichte der Juden in Rom*" and "*Aus dem Leben der deutschen Juden im Mittelalter.*" The student who wishes to pursue further studies in this direction should consult these works and also Guedemann's "*Geschichte der Erziehungswesens und der Cultur der Abendlaendischen Juden.*" The English reader will find a fascinating picture of the culture and civilization of the Jews of this period in "Jewish Life in the Middle Ages," by Israel Abrahams.

In conclusion the writer feels it a pleasure to express his gratitude to the Stroock family who established the prize which was the immediate stimulus to his undertaking this study, and to whom he is now under additonal obligations for making possible the publication of this book. During the course of the four years in which at various times the author has been engaged in preparing this volume he has received help from many friends both far and near. To Dr. A. E. Cowley, Dr. L. D. Barnett, Dr. H. Hirschfeld and Dr. A. Freimann, he is indebted for having kindly placed at his disposal copies and photographs of various manuscripts in their respective libraries. To Dr. Cyrus Adler, the President, and Professor Israel Davidson, the Registrar of the Seminary, as well as to Professor D. S. Blondheim of Johns Hopkins University, he is thankful for their willingness to discuss with him various aspects of his work, and for helping him by many suggestions and criticisms; to Dr. Rosenberg of Ancona, he is under obligations for giving him permission to reprint the Takkanot of Candia from the *Hoffmann Festschrift*; to Mr. D. S. Sassoon of London, for generously sending him photographs of the part of the manuscript of the Takkanot which Dr. Rosenberg did not publish. The author has been considerably helped in preparing the manuscript of this volume by his wife as well as by his friend, Mr. Maurice Samuel, both of whom suggested a number of improvements

in style. Mr. Frank Schechter and Mr. Maurice Finkelstein have also been helpful in discussing certain aspects of the work.

The proofs of this work have been read by Professor Louis Ginzberg who, with his keen mind and unparalleled grasp on all fields of Jewish literature, helped in the solution of a number of problems which at first seemed almost insoluble. More than to anyone else, however, the author is indebted to Professor Alexander Marx, who not only provided him with much of the new material contained in this volume, but took a personal interest in the work, and with his usual generosity and unselfishness read the work both in manuscript and in proof, making innumerable suggestions and helpful criticisms. It is not too much to say that without the help of Professor Marx this book could not have appeared in its present form.

In stating his indebtedness to his teachers and friends for their kind co-operation, the writer does not wish to free himself from ultimate responsibility for all the statements made in it. Such errors as may be charged against it, whether of fact or of judgment, must be set against him. He trusts, however, that whatever may be the failings of the work, the reader will through it become more interested in the history of the Jewish people and their literature. If this purpose is achieved, the author feels that he will have accomplished his task.

LOUIS FINKELSTEIN.

FOREWORD

Several years ago Messrs. Louis S. Stroock, Mark E. Stroock, Moses J. Stroock, Joseph Stroock, and Sol. M. Stroock, established at the Jewish Theological Seminary of America, the Abraham Berliner Prize in Jewish History in memory of their uncle, the distinguished historian, my revered master, Professor Abraham Berliner. One of the early subjects announced for this prize was "The Rabbinical Synods from the Eleventh to the Seventeenth Centuries." In 1920 the prize was awarded to Dr. Louis Finkelstein. Since that time the essay has been carefully revised and enlarged by the author and is now published through the generosity of the gentlemen who established the prize.

The important subject discussed in the following pages has never heretofore been treated by itself, and but a few of the synods have been made the subjects of smaller monographs. It is only a comprehensive treatment that enables us to gain a full view of this most important aspect of the constitutional activity of the European Jewish communities during the Middle Ages.

It is most interesting to observe how the economic and social decline of German Jewry in particular influenced this part of their activity. The spirit which finds expression in the enactments of the period preceding the Black Plague is quite different from that of the later period. Their whole outlook on life was changed as they gradually were turned from free citizens into bondmen of the emperor and the many petty rulers of the cities. Their spiritual activity was dwarfed and the legal developments of the succeeding centuries show the unhealthy influence of their unfortunate status. Nowhere is this as evident as in the synodal enactments which pass before our eyes in Dr. Finkelstein's book.

A study of this development is of the greatest value for

the solution of the problems of the present day. While there is no more room for such provincial gatherings in our time when the Jewries of the whole world are brought into close contact by modern methods of communication, there is no doubt a crying need for a representative gathering embodying in its membership the Jewries of all the various countries, to grapple with the problems confronting us. Such a body which must enjoy the confidence of all the people in the same measure in which it was possessed by those ancient predecessors and must act in the spirit of the synods of the eleventh, twelfth and thirteenth centuries, continuing where they stopped, would be the greatest boon for the present and future generations. Let us hope that the development of conditions in Palestine will in its natural course lead to the consumation of this ideal for only in Palestine can we imagine the successful accomplishment of such a scheme.

To return to the book before us, it has the great merit of collecting in one place all the various texts that have come down to us with the enactments of the different synods. A good deal of the material is new. The Takkanot of Corfu and some of those from Italy were entirely unknown heretofore. Of the greatest importance is the treatment of the German synods which takes up the larger part of the volume. The comparison of the various texts both printed and hitherto unprinted has made possible the establishment of the character and authenticity of sets of Takkanot by Rabbenu Gershom and Rabbenu Tam. Incidentally new light is thrown in the course of these investigations on the history of German Jewish life in the days before Rabbenu Gershom, about which so few sources are available. In regard to the synods of the Rhine communities in the early part of the thirteenth century the author has found in a manuscript of Jews' College a text which is older than either of those previously published. Moreover he shows that the text hitherto accepted as containing the enactments of the synod of 1220 is in reality a revision of the earlier text by a later synod, which met in the middle of that century. Altogether the new material has enabled

the author to establish more reliable texts and to place his discussions on a broader and firmer basis. The book is undoubtedly a very welcome addition to our historical literature and enriches particularly the scanty English publications on such subjects.

ALEXANDER MARX.

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PART I

GENERAL ACCOUNT OF THE RABBINICAL SYNODS

CHAPTER I

EUROPEAN JEWRY IN THE TENTH CENTURY

Among the innumerable Talmudic legends which are centered about the life of Moses, one, among the most beautiful, deals with the last moments of the law-giver and liberator. As he stood on Mount Nebo, overlooking the valley of the Jordan, the legend tells, the veil was lifted from his mortal eyes and the future story of his people was unrolled before him, generation by generation, until the coming of the Messiah. We, the children of this age, looking back on some of the centuries that he foresaw, with their marvelous changes, may well ask ourselves with what profound and alternating emotions of joy and grief the sage hailed the prophetic panorama. For in the intense forshortening of his last mortal moments, he saw the rise and fall of the tiny Jewish kingdom, the swift blossoming of its sacred and secular glory, its humiliation and destruction, the brief but poignant agony of the first exile, the slow, heroic reconstruction of the second Jewish commonwealth, its struggles and death-agonies—and the final catastrophe which shattered the edifice of his building after more than a thousand years, and scattered its fragments to the ends of the world.[1]

Thus too did the Sages of old picture to themselves the last moments of Israel's first leader. The great drama of the history of the Jewish people, with its crises, with its moments of tension, with its generations of anxious foreboding, became even more impressive when it was seen as a vision of an ancient lawgiver and prophet. Yet the epic contains no tenser moment than that which marked the disappearance of the Jewish center in the east and the development of new communities in the West. Even the fall

[1] Comp. *Sifre*, Deuteronomy, ed. Friedmann, p. 149a.

of the Second Commonwealth, catastrophic as it was, and full of peril to the continued existence of the people, was of no greater significance than the fall of the academies of Sura and Pumbedita. For when the independence of Israel was lost there still remained the spiritual authority of the elders; the Jews throughout the world were still bound together by bonds of common allegiance to recognized leaders. With the fall of the Babylonian academies the last semblance of centralized authority was lost. Nevermore could any Jewish community lay claim to the hegemony of Jewish life. The authority of the rabbis of each country was limited by the political confines of the secular government. The disruption of the Jewish central authority would of itself have made the period memorable, but the full extent to which it was fraught with danger can be realized only when we remember that these new western communities, which were rising into prominence, were living under novel conditions—conditions so different from those which had previously surrounded Jewish life, that only by a miracle could one hope for a survival of the ancient nation.

For several centuries the Jewish communities of Europe attempted to follow the guidance of the Eastern authorities, the heads of the Palestinian and Babylonian schools. Numerous letters have been preserved in which the old scholars of Asia gave their decisions in reply to questions addressed to them from the West. Agents of the old academies travelled throughout the new communities collecting contributions for the maintenance of the houses of learning. Sometimes these representatives who were often scholars of note, were persuaded to remain in Europe and to serve as rabbis for the communities. There thus were planted the seeds of a new scholarship in Spain, in Italy, in France and in Germany. At the beginning of the tenth century, when the genius of R. Saadia Gaon[1] was bringing new

[1] b. Fayyum, Egypt, 882; d. Sura, 942. He was by far the most famous of the Geonim; author of many important works and a pioneer in several branches of Jewish studies, such as Hebrew lexicography, philosophy, methodology of the Talmud. He wrote commentaries to

energy into the school of Sura, there had already been opened modest institutions of Talmudic learning on the banks of the Rhine and the Ebro. A generation later when the academy of Pumbedita, under the leadership of R. Sherira and R. Hai Gaon,[1] had surpassed that of Sura, these new western schools had already produced scholars who could rival the eastern masters in learning.

Yet the increase of knowledge of Jewish tradition could not of itself solve the problem of the adjustment of Jewish life to its new conditions. Probably the majority of the Jewish people were at this time still living in Asia or Africa. They were under the dominion of Islam. While the Arabic world was from time to time plunged into the throes of civil war, there were long stretches of comparative peace; the edict of the caliph was obeyed; there was thriving commerce and industry; there was a semblance of justice, even though at times it had to be purchased; there were large academies where scientific studies were pursued.

Far different were the conditions that prevailed in Christendom during the tenth and eleventh centuries. Ignorance was all but universal. Even so great a potentate as Charlemagne had been unable to write his name. He could only make the two lines that formed the "u" of his name, Carolus, the rest was filled in by the scribe. Conditions had not much improved in the two centuries that had elapsed between the time of his death and the eleventh century. Under the feudal system the traveler was at the mercy of every baron and petty landholder through whose territory he had to pass. The central government was as a rule very weak; justice could rarely be obtained against one's superior except by appeal to the sword; the anarchy that filled Latin Europe in the tenth century brought about a relapse from the moderate intellectual attainments of the ninth century.

the Mishna, and Arabic translation of as well as commentaries on the Scriptures. See Malter's *Life and Works of Saadia Gaon*, Jewish Publication Society, 1921. For his dates see also Mann, J.Q.R. (N.S.) II, 423–4; and Marx, R.E.J. 74. 222.

[1] d. 1038. The last important Gaon of Babylonia.

It was inconceivable that the Geonim living under Moslem rule should have a correct understanding of the problems confronting their brethren in the new, slowly-developing European states. Even if all that was needed had been guidance in Talmudic study and the ritual, it would have been difficult to live permanently under the rule of foreign leaders. But the Western Communities needed more; they needed guidance in a diplomatic, statesmanlike sense. Their problems were not merely matters of prayer-book and forbidden food, but they often involved their relation to the government, their control of their own members, and the adjustment of the Talmudic civil law to the new conditions. In these matters the Geonim could not aid them at all.

In the case of the Spanish and Italian communities their proximity to the ancient centers made the problem less formidable. Especially were the Spanish communities able to rely on the spiritual leadership of the Geonim long after that had failed the communities north of the Pyrenees. They spoke the same language and in general belonged to the same culture as the Oriental scholars. Far different were conditions in France and Germany where feudalism was at its zenith. The political institutions that were developing, the influence exerted by the Church on the infant states, the very character of the people among whom they lived were helping to shape the future of the Jewish communities. From being insignificant in the tenth century, the Jewries of Western Europe developed into foremost communities by the thirteenth. They overcame the all-prevading ignorance that was strangling their cultural life before the year 1000, and by the year 1300, their children were teachers of the Jewish world. The persecutions of the Crusades, the incessant hatred, the ruthless tax-exactions, the general anarchy of the country could not repress their soul.

The problems that faced the Jews in those critical centuries were solved largely by synods and councils where representatives of the various communities gathered, usually at the call of one of the great leaders of the people. The decisions reached at these conferences appear even

from the distance of a thousand years to have been in most cases the most far-sighted. Among the leaders who were responsible for the gathering of such synods, the foremost was R. Gershom b. Judah. It was he who in the tenth century laid the foundations of the system that helped to organize and to strengthen French and German Jewry for half a millenium. The importance of his work can hardly be overestimated, but it will be better understood in the light of the institutions which the Jewish communities had developed when he came forward as the leader of German Jewry.

CHAPTER II

EARLY JEWISH INSTITUTIONS IN FRANCE AND GERMANY

a. THE HEREM BETH DIN.

Even during the formative period, before the year 1000, the communities of Israel in France and Germany had developed customs which were destined to play an important part in their life. Their very distance from the old centers made the creation of new institutions inevitable. While these institutions were primarily legal, they are of importance in discussing the life of a community whose main bond of union was social rather than economic or political.

One of the main problems that faced the Jewish communities of the West was that of establishing courts of justice. The secular courts had not yet developed any system of jurisprudence that was comparable to Talmudic law. On the other hand the fact that the Jews were fast becoming the men of commerce made necessary for them a more intricate system of law than was required for the simple peasantry of the surrounding population. The matter was all the more urgent since the feudal courts hardly provided for the Jew. Society as well as law was based on the assumption that the litigants were Christians and the Jew was forced to seek his justice elsewhere.

Moreover the German and French Jews had inherited from their ancestors a strong attachment to the system of having their own courts.[1] When Jerusalem had fallen the local courts still retained their right to decide civil cases, and in some cases even criminal matters. The

[1] *Gittin* 88b and comp. I Corinthians 6.1, where Christians are urged not to appeal to heathen courts.

Babylonian courts, too, had been permitted by the secular government to apply Talmudic law in civil matters. The Jews of the period were inclined to regard it as a reflection on their own law, to take a case before the secular courts. There was still a sense of hesitation about permitting the Gentile population to hear their quarrels.

As the infant European states did not interfere with the retention of the autonomy of the Jewish communities, and even encouraged it, local courts were established by the Jews in the important communities. In order to insure obedience to their decrees these courts made use of the right of excommunication or *Herem*. Just as in Talmudic times[1], so in the new communities of Western Europe a person who failed to respond to a summons or carry out a decree of the court was laid under the *Shamta*. Excommunication was so effective a punishment that there was no need of police power or physical force of any kind in the execution of an order of the Court. For the excommunicated person was not only forbidden to take part in the religious life of his people, which in itself would have been a serious blow to anyone in those days of piety and observance, but he was socially ostracized.

The possession of the power of excommunication gave the Rabbi and the Community as great an advantage in dealing with recalcitrant individuals as the similar power exercised by the Popes gave them over the kings of the twelfth and thirteenth centuries. Indeed so important was this authority, and so liable to misuse, that as the communities developed attempts were made to regulate it and to limit the right of the Rabbi or of the council of Elders to pronounce excommunications.[2]

The theoretical basis on which the Rabbis of the European communities relied in assuming their authority to decide cases and to punish the disobedient is not clearly defined. While for ordinary civil suits Talmudic law permits the litigants to choose their judges,[3] only men who had re-

[1] *Baba Kamma* 112a.
[2] See part II, p. 232.
[3] *Mishna Sanhedrin*, III. 1.

ceived ordination could act as members of regular courts of justice with power of summons. Such ordination could be issued only by persons already ordained and only on the soil of Palestine.[1] In some periods the *Sanhedrin* out of respect for the Patriarch or Nasi limited to him the right to confer the authority of "judgeship", which was expressed in the title of *Rabbi*, "my master". But at no time was it held that anyone living outside of Palestine could "ordain" any disciple. The Babylonian Amoraim were styled *Rab*. Those of them who acted as judges did so either at the invitation of litigants, or under authorization of the Exilarch.[2] According to the Babylonian Talmud, the Exilarch's right to confer judgeships was based not merely on his recognition by the secular government, but on a Biblical verse,[3] in view of the supposed descent of the Princes of the Dispersion from the House of David.

The Rabbis of the western communities were invested with the delegated authority neither by the Palestinian Patriarchs nor by the Babylonian Exilarchs. Either of two possible legal steps may have been taken to establish their position on a traditional basis. The members of the communities may have bound themselves under a *herem* or a vow, that they and their descendants would accept the authority of their duly elected Rabbis. Such a *herem* would have binding effect and would, within limits, have given the necessary legal status to the new local courts. Or the older academies (either of Palestine or Babylonia) may have issued authorizations to certain Rabbis to act as leaders for the various communities. The first Babylonian *Amoraim* like Rab (third century), had received such authorizations from the Palestinian Patriarchs; it would not be strange if it were found that the earliest European judges based their right to decide cases on similar authorizations from older scholars.[4]

[1] *Sanhedrin* 14a.

[2] *Ibid.* 5a.

[3] Genesis 49.10.

[4] Very little is known about the relations of the early European settlements to the Babylonian and Palestinian academies. We do

Which of these two methods was followed is unknown. Perhaps both were used in the various communities. It is known however that by the year 1000, the term *herem Beth Din* had come into use in the description of the authority on which the local courts acted in certain communities. Whether the source of the authority of these Rabbis was an authorization by the scholars of the east or the *herem* of the communities, it was certain that henceforth the community could determine not merely who its leaders were to be, but whether a person had reached the stage of learning that fitted him for leadership. This of necessity brought about a certain amount of confusion in Jewish life, which was not quite dispelled until R. Meir Ha-Levi of Vienna (end of fourteenth Century) introduced, for the first time, the system of ordination outside of Palestine and issued licenses to his disciples permitting them to decide matters of Jewish law. So timely was this innovation that within two generations it had been adopted throughout northern Europe and has continued till our own day. This extra-Palestinian ordination could of course have effect only in a limited sense. It could not take the place of the ancient Palestinian "*Semika*", it was merely a certificate by a recognized scholar declaring the holder fit to decide matters of ritual and civil law, to issue divorces, and generally to carry out those functions of the judge which still held in the Dispersion. The authority to issue a *herem* which was basic to Rabbinic prestige in the

find their characteristic institutions called by names which can be based only on Arabic or Aramaic roots. For instance *Ma'arupia* designates in German and French writings a group of Gentiles who customarily deal with a certain Jew. It was forbidden for any other Jew to try to attract such custom to himself. The root of the word can only be the Aramaic *Araf* "to know" (See Mann, J.Q.R. (N.S.) X, 239, but comp. Mueller, R.F.L.p. XXXVII. The word *Ikkul* in the expression *Herem Ha-Ikkul* can be based only on the Arabic root, where it means *restrain*, a connotation of neither the Hebrew or Aramaic cognate form. The attempt of the editor of the *Sefer Ha-Yashar* (p. 56), to emend *'akal* into *'akab* while merely a slight change, involves so many passages that it cannot be accepted.

Middle Ages still sprang, theoretically at least, from the recognition by the community.

As time went on the original meaning of the term *herem Beth Din* was forgotten.[1] The French Rabbis introduced the fiction that wherever a Rabbi was known to have lived in early times, one might assume the existence of a *Herem Beth Din*. Thus by the thirteenth century the distinction between communities having the *herem* and those lacking it had been completely obliterated.

b. THE HEREM HA-IKKUL.

Of a different character from the *Herem Beth Din*, but nevertheless very important in view of the number of times it is mentioned by mediaeval scholars, is the *Herem Ha-Ikkul*. This was an unwritten law forbidding a person to retain an article that had been entrusted to him, even though he had a claim against the owner. Such a law was necessary in the Middle Ages when a person would very often have to protect his property by entrusting it to another. In many cases one did not have the time to choose a bailee who could be trusted, and unscrupulous persons might easily take advantage of the panic into which the owner of an article was thrown by a bandit attack or by the fear of seizure of his property by a tyranical baron. In days when there were no safe deposit boxes and property was largely limited to cash and movables—for the Jews rapidly lost their land after the beginning of the tenth century—the protection of bailments was a fundamental necessity.

c. THE HEREM HA-YISHSHUB

The anarchic conditions of the Middle Ages were such that insecure as was the possession of movable property, the protection of landed property was even more difficult. The large landowners preyed on their small neighbors, and in the absence of any real repressive force, the small

[1] See below, Part II, p. 127, note 3.

landholder had to seek his safety in voluntary vassalage to some powerful baron who could protect him. At times instead of choosing a private overlord, a person might prefer to give his property to the Church and receive it back as a *beneficium*. Even Jewish farmers at times availed themselves of this method, but in general the feudal system left little room for Jews as owners of real property. The conditions that ultimately brought about the conversion of most of the allodial land into feudal domain, worked to deprive the Jews of their small farms. There was, however, this difference: that while the Christian remained a vassal or tenant on the land which had formerly been his own, the Jew had to seek some other occupation than agriculture. It was during this period that there occurred the separation of the Jew from the soil that has left such an indelible mark on his development.

Driven from his farm, the Jew found the life of the artisan closed to him. The guild system as effectively prevented his becoming a tailor or a carpenter as the feudal system had forced him from his land. With most avenues of life closed to him, the Jew chose the only one that remained open, the life of trade.

He was the more fitted for this occupation because he could import and export with greater ease than his Christian neighbor, his co-religionists in other countries being attached to him with the bonds that always hold members of minority races together. Moreover political boundaries did not imply for him any change of language, for his fellow-Jews throughout Europe and Asia understood Hebrew even when they could not speak it. He was thus able to import and export with far greater ease than his Christian countryman.

Yet in determining the causes for the movements of large masses of people, it is insufficient to take account merely of the economic facts. It was not merely the pressure of circumstances that was forcing the Jew into the life of trade, but there was added to that an inner impulse. The Christian could satisfy his love of adventure in battle or combat; the Jew to whom the life of hazard

had an appeal could only enter upon commerce. That many Jews of the period were such as would be likely to take risks and tempt their fortune, was the more natural since they were largely descended from the early pioneers who had had the hardihood to leave their secure homes in Asia and seek their fortune in an unknown land. The spirit that animated these men was not unlike that which was the compelling force of the early American pioneers. And just as the American of today has inherited from his pioneering ancestors the ingenuity, daring and foresight which distinguish him, so did the Jew of the tenth century in Europe display a love of hazard and a desire for trade, which is largely traceable to the character of his ancestry.

While the causes that were taking the Jew into commercial life were natural, the Rabbis of the period were far-sighted enough to see the danger that lurked in the complete alienation of their people from the soil and they tried to stem the tide that was drawing the people to commerce. Centuries before, the Sanhedrin in Jerusalem had been engaged in a similar struggle to keep the land of Israel from falling away from the ownership of the people. Laws had then been made forbidding the sale of land or even of oxen to plough the land to the conquering Romans.[1] This effort had failed. Even less could the poor Jews of the ninth century, who saw their farms passing out of their hands, and the apparently uncontrollable movement into the towns begin, hope to prevent the passing of their estates to their neighbors. It is pathetic to see the struggle of the Jew to keep a last hold on the soil. Since the days when his wandering ancestors had settled in Palestine, he had been an agriculturist—in Palestine, in Babylonia, in France and Germany; more than two thousand years of ploughing and reaping, of sowing and harvesting. His festivals were all festivals of the soil, his laws were largely those dealing with the farm. He did not want to go to the towns, and yet it seemed that inexorable Fate was driving him there.

Attempts were made to lighten the economic burden of the Jewish landowners. Taxes were in those days levied

[1] *Aboda Zara* I. 5.

not on each individual but on the entire Jewish community, and the Community was obliged to apportion the burden among its members. The Jewish communities declared farms tax-exempt. Men like Rashi and R. Joseph Tob-Elem living in France in the eleventh century, urged that this exemption be not taken away.[1] In days of Single Tax propaganda, like our own, this may sound very strange. But R. Joseph points out that in his day land was a precarious possession, its productivity depended on uncertain climatic conditions, and its owners were oppressed with all manner of demands. Two centuries later, R. Meir b. Baruch in Germany, quotes R. Joseph in support of the custom of his country, where land was not taxed. R. Meir defends the tax-exemption of land by citing some Talmudic passages, but one can readily see that it is not the force of the passages quoted so much as the conditions of the people that influenced his decision. It may be that one Talmudic authority declared that there is no worse occupation that agriculture,[2] but surely that is not to be taken literally. One could easily quote the statements of a number of Rabbis highly praising that occupation.[3] The truth is that both R. Joseph Tob Elem and R. Meir b. Baruch were faced with a situation which they and their colleagues considered full of peril, the estrangement of their people from the farm. They tried to stem the tide, and doubtless their efforts helped to delay, albeit they could not avert, the day when the Jews found themselves no longer men of the soil but men of commerce.

The method of tax-exemption was more successful than the direct prohibition against selling farms to Gentiles could be. Yet even that was adopted in some communities though it never became general.[4] An attempt was made, however, to prevent Jews coming into the towns. Any one wishing to move into a town had to be accepted by the population already there. It is sometimes said that R.

[1] RMP 941, *Mordecai, Baba Batra* 840. For Rashi's views see his ordinance, Part II, p. 148.

[2] *Yebamot* 63a.

[3] See Funk, *Juden in Babylonien*, I, p. 21, note 3.

[4] *Raben* I. 52.

Gershom established this custom but it certainly antedates him.[1] Only those who were required to take part in the religious services of the community could enter without hindrance, all others could enter only if the community voted to admit them.[2] This institution was called the *Herem Ha-Yishshub.*

Numbers of cases arose under this law. Very often a community would feel itself justified in refusing admission to a man, and he would appeal to the court of the most generally recognized scholar. Sometimes a person would claim that he had inherited the right to settle in a given community. Since the matter was considered one entirely under the jurisdiction of the communities and not at all based on Talmudic law, women and relatives were admitted as witnesses. There was a disposition to accept the testimony of a single witness and to hear the evidence presented by children. This tendency was checked by Rashi,[3] who insisted that this *herem* was in fact based on Talmudic law.[4] After his death, Rashi's view was opposed by his grandson, R. Jacob Tam (France, twelfth century). R. Tam claimed that the Talmudic law[5] forbidding strangers to settle in a town against the will of the inhabitants, applied only to such persons as refused to pay their share of the taxes.[6] He held that no Jew could be refused admission into a Jewish community if he was willing to accept their rules. The *Herem Ha-Yishshub* itself was limited by him as applying only to "those who are powerful and who denounce their brethren to Gentiles and who refuse to accept their part of the tax burdens of the community."

[1] Res. R. Jacob Weil, in Isserlein, *Pesakim* 126; See also *Mordecai Baba Batra*, II, 517 and Res. R. Moses Mintz, 89.

[2] R. Isaac Or Zarua, quoted by R. Jacob Weil, in responsum mentioned in note 1.

[3] For his contribution to Jewish synodal activity see below Chapter IV.

[4] RMB p. 67, 514; but see Res. Maim. *Shofetim* 13.

[5] See additional Note A, on p. 376, below.

[6] See RMR, 111, where R. Moses Taku, quotes these words from a responsum of R. Eliezer of Orleans, who claims that he heard them verbally from R. Tam.

While R. Tam may have succeeded in limiting the scope of the *Herem Ha-Yishshub* in France, the German scholars were not inclined to follow him. A generation after his death, R. Eliezer b. Joel Ha-Levi, better known as Rabiah,[1] declared that R. Tam had dealt only with the theoretical interpretation of the Talmud, but that his words had no bearing on the practical application of the *herem*.[2] As R. Eliezer was one of the foremost authorities in Germany during the first half of the thirteenth century, it is clear that the effect of R. Tam's decision was limited to France. Somewhat later, R. Meir b. Baruch tried to explain that R. Tam's views applied only to such places as had not definitely adopted the *Herem Ha-Yishshub*.[3] R. Meir's interpretation of the view of R. Tam. was accepted by the later scholars in Germany where the *Herem Ha-Yishshub* continued in force till the sixteenth century.

d. INTERRUPTING THE PRAYERS

The fourth institution which helped to shape the course of the development of German and French Jewry was the custom of interrupting the prayers in order to call public attention to private wrongs. Even under an autocratic government public opinion is a force to be reckoned with. It is a rare monarch who is indifferent to the love or hate of his subjects. Their affection or antipathy may have little consequence for his material life, but insofar as he is human, he longs to be loved. As he yields to this longing, the tyrant becomes the benevolent despot. The power of public opinion is incomparably greater where ultimate sovereignty is vested in the people. In little democracies such as were the Jewish communities the

[1] Grandson of R. Eliezer b. Nathan, lived at the end of twelfth and the beginning of the thirteenth centuries. For his life, see *Monatsschrift* vols. 34, 35.

[2] See excerpts from his book in RMR 77, quoted also in *Mord. Baba Batra* chapter II, 519.

[3] RMP 382.

aroused collective mind of the people presents a power that is almost irresistible.

The interruption of the prayers by a person having a complaint had much the same effect in a Jewish community of the twelfth or thirteenth century as has an exposure of a crime or a wrong in a modern metropolitan newspaper. The congress, the executive, the various governmental agencies may for some reason or another prefer to close their eyes to some nefarious practice. A widely-read magazine in a series of articles endeavors to arouse public opinion. Soon, whether they wish it or no, the officers of the government find themselves compelled to take action. In the Mediaeval Jewish community, where there were no newspapers or magazines, the aggrieved person would arise in the synagogue and prevent the continuance of the prayer until his case had been examined. Since practically every male Jew attended daily services, the whole community would thus hear his complaint.

The custom of making public complaint is not mentioned in Talmudic sources. Even in later Rabbinic works,[1] we

[1] See *Ha-Zofeh*, 1.88, where Aptowitzer has called attention to Jer. *Kiddushin* 61c where we read

ר' יאי ור' יונתן הוון יתבין אתא חד בר נש ונשק רגלוי דר' יונתן א"ל ר' יאי מה טיבו הוא שלם לך מן יומוי א"ל חד זמן אתא קבל לי על בריה דיינניה ואמרית ליה איזל צור כנשתא עלוי ובויתיה.

He interprets the passage as follows: R. Jannai and R. Jonathan were conversing when a man came up and kissed the feet of R. Jonathan. Thereupon R. Jannai asked his colleague, 'What kindness hast thou conferred upon this man?' R. Jonathan explained, 'Once he came before me complaining against his son, who failed to maintain him. I said to him, "Go, *close the synagogue* against him and shame him."'

The words spaced in the Hebrew and rendered by the English "close the synagogue" are extremely doubtful. It is true that the interpretation given to the passage by Aptowitzer has the support of no less an authority than R. Solomon ibn Adret (Res. 4.56). The same interpretation is also implied in the *Sefer Hasidim* (ed. Berlin, p. 411, See *Ha-Zofeh* 2.97 and compare additional note D, p. 382). Yet the difficulties in the way of accepting this interpretation of the passage are insurmountable. Firstly צר does not mean *close* in the sense of closing a house, but rather in the sense of tying a bundle. It is used in an applied way of closing a bottle, but its use in connection with closing a synagogue would be exceedingly

find it limited to France and Germany.[1] Nevertheless, it represented the feeling of the people to which the highest expression had been given by the Prophet: "And when you spread forth your hands I shall conceal my eyes from you; even though you make many prayers I will not hear; your hands are full of blood."[2] One who felt that wrongs were being committed with the connivance of the representatives of the community, could not permit the continuance of prayers. Neither Prophet nor Rabbi could reconcile worship of God with injustice to man.

extraordinary. Secondly, we will see that interrupting the prayers was customary in Germany and France, but practically unknown elsewhere It would be strange if a custom mentioned in the Palestinian Talmud, should re-appear only in Germany and France. The evidence of the author of the *Sefer Hasidim* to the interpretation loses its value when we consider how natural it was for him to read into the passage the custom that was daily before him. Ibn Adret must have heard of the custom while in France or from a German traveller, or perhaps he heard the interpretation from one of them.

In the *Pesikta Rabbati* the story is told again, and in his notes there (p. 122) Friedmann agrees with most of the commentators on the Jerushalmi in explaining the obscure phrase, as "gather a crowd". However, צר is rarely, if ever used in the sense of "gather". It is true that the parallel passage in *Peah* 1.1. (and the quotation in *Tosafot Kiddushin* 32b) read קץ, but that is probably a scribal emendation. Professor Ginzberg suggests that צר here is connected with the Aramaic root צצר which means "to chirp" or "to make an outcry". In that case, the passage means, "Make an outcry against him in the synagogue and shame him," which gives by far the best interpretation. This meaning of the word is to be compared with the expression in *Jer. Maaser*, chapter III, 51a.

[1] The interruption of the prayers is mentioned in Res. R. Isaac b. Sheshet (176) as having occurred in Tunis. At the present writing I can recall no other mention of it by a Spanish authority, except that in Res. R. Solomon ibn Adret, 4.56, cited in the preceding note. (See note, p. 382, below). In *Ittur, Dine Berurin*, ed. Warsaw, I, f. 47a, reference is made to the interruption of the prayers in the Provence. Since in general the customs of the Provencal Jews were similar to those of the Spanish Jews, this passage would seem to reflect the existence of the custom in Spain. Moreover Estori Farhi in his *Kaptor Va-Perah* (ed. Luncz, p. 332) cites this passage from the *Ittur* without further comment. So that we may assume that while the custom may have originated in France and Germany, it filtered through to other communities.

[2] Isaiah 1.15.

Aside from the fine theological conception on which the institution was based, its practical application was a bulwark of strength for the weak and oppressed against the powerful. Judges are only human and again and again do we find exhortations to them to beware the undue influence of the great. It might be that the fear of the Gentile ruling powers would prevent a judge from investigating a charge, but as soon as a matter became public the judge was forced to take action. Jewish history in France and Germany tells, page by page, of quarrels and bitterness, of suffering and persecution, but never was any attempt made to deprive the people of the right of interrupting the prayers. Just as the British held dear the right of petition, so did the Jews hold dear their means of calling public attention to their wrongs.

e. TITHES (*Ma'aser*)

So long as Israel lived in Palestine it was customary to give one tenth of one's produce to the Levite who in many cases acted as teacher. Every third year a second tithe was set aside for the poor. Besides these there were other gifts to the poor that had to be made before the harvest could be gathered in. It was the impossibility of fulfilling these agricultural laws in a foreign country that made the soil of Palestine so sacred to the Jew. Nevertheless even after the dispersion Jews made some attempt to carry out the spirit if not the letter of the law. But the gifts were no longer given to Levites but were rather devoted to communal institutions, such as schools and charitable organizations. Nor were the gifts now necessarily a tenth of one's income. There is evidence to show that most often it was a much smaller proportion. Thus we are told that R. Moses Minsz (Germany, fifteenth century) fixed it at one fortieth of one's income.[1] But the term *ma'aser* was still used because the funds represented a definite percentage of each person's income.

[1] Res. R. Moses Mintz 40. Compare below, p. 185, note 3.

Such were the five major institutions of the German and French Jews before the time of R. Gershom. Their development reflects an understanding of conditions, a sense of justice, an ability to perfect organization, which must arouse admiration. The Jews of Germany were awaiting only the arrival of a truly great leader to take a foremost part in the activities of their people. The needed leader arose in the person of R. Gershom.

CHAPTER III

RABBENU GERSHOM

The development of such customs as the *Herem Beth Din* and the *Herem Ha-Yishshub* imply the existence in early France and Germany of Rabbinic scholars. While their contributions to the development of Jewish law and literature were very modest, they devoted themselves to study and in their humble way laid foundations for the future development of Franco-German Talmudic learning. The most prominent of these early teachers were R. Kalonymos[1] and R. Leontin.[2] The fame of all his predecessors was, however, eclipsed by R. Gershom b. Judah of Mayence, the first truly great German scholar and leader.[3] With a genius not merely for learning but for practical organization, he achieved what few others could accomplish: the establishment of Jewish learning in his country on a sound basis, and the uniting of the scattered communities into a federation. With his critical insight and care he wrote with his own hand copies of the Talmud which served for centuries as standard texts in the academies of his country.[4] His responsa were quoted for generations and many of them have been preserved till our own day. While it is true that the commentaries that have in modern times been published under his name,[5] are now known to have been written by subsequent scholars, it is certain that much of their content is based on comments of his which were transmitted orally.

R. Gershom's fame, however, rests mainly on his legisla-

[1] Mueller, *Kalonymos of Lucca*, p. 4.

[2] *Or Ha-Hayyim*, p. 461.

[3] For his life, See *Ha-Shiloach*, vol. 28 (1913).

[4] See *Sefer Ha-Ittur*, Part II, ed. Lemberg, p. 17a; and *Tosafot* of R. Judah Sir Leon (ascribed to R. Judah He-Hasid) *Berakot* 19b.

[5] Epstein, *Steinschneider Festschrift*, p. 115.

tive activity. For R. Gershom re-introduced the law-making function of the Rabbi. It is in this field that we become aware of the keen insight into the needs of the people and of the thorough grasp of their problems that made R. Gershom not only the leader of his own generation, but as the years rolled by, the lawgiver for most of the Jews of Western Europe. It is not to be supposed that he was wealthy or had influential relationships. It was sheer power of learning and strength of character, combined with charity of discernment that placed him in this position of foremost authority.

The problem which confronted him as lawgiver was different from that which had come before any Jewish leader for generations. For the traditional unity of the Jewish people had at last been disrupted. Living in lands of petty principalities it was natural for the European Jews to develop small, independent and jealous communities. Whereas previously the Jews throughout the world had looked to some central authority to guide them in matters of religious observance, each community now had its own traditions. The people of Mayence had their local customs which differed from those of the neighboring community of Worms.[1]

R. Gershom undertook no less a task than that of bringing all these scattered communities into a federation. Had he fully succeeded it could have been accounted nothing less than a miracle, for the idea of a democratic federation had never been fully developed in Israel. There had been obedience to constituted authority but this authority was always based on that of past ages. R. Gershom proposed to establish a voluntary constitution among the communities that would claim its authority solely from those whom it governed. It is true that he would not have stated his thought in these precise terms, but the fact is, nevertheless, that he, a scholar with no traditions in his office, undertook to legislate for a large number of communities in Israel. One can hardly believe that he failed to realize the serious-

[1] For some examples of these differences of custom see *Rokeah*, 108, 294, 317, *Ma'aseh Ha-Geonim*, p. 17, Glassberg *Zikron Brit La-Rishonim*, p. 70, and Freimann, in *Hoffmann Festschrift*, Hebrew, p. 17.

ness of the step that he was taking. He well knew that till his day the center of authority had been vested in the Palestinian and Babylonian academies. Yet the times demanded drastic action and that he took.

It must be noted, however, that R. Gershom never stepped beyond the limits set in the Talmud to local legislation. He made no attempt, of course, to abrogate the law, or to establish a European Judaism that would differ essentially from that of the past. It was mainly in the field of civil law, and in the matter of adapting the Jewish law of marriage and divorce to the new conditions that had to be faced in Christian countries, that he undertook to introduce innovations. In order to base on the Talmud his authority for the step that he was about to take, he had recourse to an ancient institution. The Scriptures tell how Ezra, in order to stem of tide of assimilation that threatened to destroy Israel during the first days of the Second Commonwealth, ordered all those who had returned from Babylonia to Palestine to appear before him and his colleagues. Those who failed to appear were to be punished by having "their substance forfeited and themselves separated from the congregation of the captivity."[1] It was on this verse that the Rabbis based their right to excommunicate members of the Jewish community who failed to obey a court-order. This verse was also believed to endow Jewish courts with the right to issue not merely judicial orders, but legislative ordinances. The Geonim, supported by the political power of the Exilarchate, had used the *Shamta* (as excommunication was called) but had not developed the conception beyond its Talmudic limits. R. Gershom finding himself in Germany with no other power than the spiritual force of the *Shamta* employed and developed that as it never had been before his day.

1. ORDINANCES REGARDING THE MARRIAGE LAW

The legislative activity of R. Gershom falls into two parts. He established several important ordinances which

[1] Ezra 10.8.

deal primarily with Jewish religious law, especially the marriage law. But he also established Takkanot regulating the relations of the communities to one another and to their members. While the communal ordinances were of more far-reaching significance in his own day, the name of R. Gershom is today heard more often in connection with the religious ordinances. The communities for which he legislated have lost their position of preeminence and the Jewish situation today is totally different from what it was in his day, but the Jewish family has endured and his Takkanot in regard to it are of the utmost importance in Jewish religious life in modern times.

a. TAKKANAH AGAINST PLURAL MARRIAGE

The best known of the ordinances of R. Gershom is that forbidding a person to marry more than one wife. Plural marriage had not been common in Israel for centuries. R. Ammi lays down the principle that no one may marry a second wife against the will of his first wife.[1] The rule is disputed by other authorities, but reflects the tendency in Talmudic law toward the monogamous family. Indeed some of the Karaites declared that bigamy was Biblically prohibited.[2] They interpreted the verse, "And thou shalt not take a woman to her sister to be a rival to her"[3] as referring to any two women, the word for "sister" being used in its most liberal sense of "neighbor". While it is true that this interpretation is somewhat fanciful, it does show

[1] *Ketubot* 65a.

[2] Poznanski, *Revue des Etudes Juives*, 45.186; see Buber, *Lekah Tob*, Deuteronomy 21.15, and the note. Compare also Schechter, *Fragments of a Zadokite Work*, p. 4, l.20, and Ginzberg, *Eine Unbekannte Juedische Sekte*, p. 24. Buber's theory that R. Gershom was aware of the Karaite aversion to plural marriage and in order not to appear to be adopting their attitude limited the duration of his ordinance to the fifth millenium, is hardly tenable in view of the improbability of any direct information concerning the Karaites in Germany, and further in view of the fact established, below p. 143, that there is no reason for assuming that the Takkanah was intended to expire in 1240.

[3] Leviticus 18.16.

that long before the time of R. Gershom, plural marriage had become so obsolete in certain parts of Jewry that this sect could conceive of its having been Biblically prohibited. Nevertheless there must have been specific instances of polygamy, especially among the wealthier classes and R. Gershom decided that the time had come for Israel formally to declare its adherence to the monogamous life.

The text of the ordinance has not been preserved, so that we do not know what its original scope was, or what was the immediate occasion that called it forth. There is no reference to it before the time of Rashi, almost a century after its promulgation. Rosenthal[1] assumes on the basis of textual difficulties in later records[2] that the Takkanah was originally intended only for the three Rhine Communities — Mayence, Speyer, and Worms. But aside from the fact that it has now been definitely proven that the Jewish community of Speyer came into existence only in 1084, about half a century after the death of R. Gershom, and further that the text on which Rosenthal bases this view dates from a period long after R. Gershom,[3] it is intrinsically improbable that a Takkanah intended only for a few communities would have been so generally accepted as was this Takkanah. There are numbers of rules which R. Gershom laid down for the Rhine Communities but those never gained the wide recognition that was accorded the ordinance against bigamy and its sister ordinance forbidding compulsory divorce. One of the laws laid down by R. Gershom for the Rhine Communities, for instance, forbade the issuing of any divorce without the consent of representatives of the communities. We never hear of any attempt to extend the provisions of that ordinance beyond the Rhine district. Moreover the very fact that R. Gershom established this very stringent rule for divorce in the Rhine Communities shows that the more lenient rule, permitting divorce if the wife consented thereto, was meant also for other communities. Since the ordinance against compulsory divorce was thus intended for all the German communities, and per-

[1] *Hildesheimer Festschrift*, p. 37 ff.

[2] See Part II, Chapter II.

[3] Epstein, *Jued. Alterthuemer in Worms u. Speier*, p. 16.

haps even for the French, it seems certain that the same was true of the ordinance against plural marriage.

When we say the R.Gershom established this ordinance we must of course realize that he was merely a prime mover. The ordinance could only have been established by a synod representing the various communities for whom it was intended. Just as Hillel is mentioned in the Mishna as the person responsible for the *Prosbul*, and just as R. Johanan b. Zakkai is called the author of the ordinances which bear his name,[1] even though in both cases they were merely the men who led the Sanhedrin and urged the passage of the laws, even so was R. Gershom called the originator of Takkanot which were passed by synods that met under his direction. It may be well to note here that these synods were usually held in connection with large fairs. We know of a later Takkanah that it originated during a gathering for commercial purposes,[2] and the same was probably true of most of the synods. When we recall that the members of the synods of whom we speak ordinarily as rabbis, were quite often not salaried officials at all, but business men and workers of sufficient learning to be the leaders of their respective communities, we will readily see that a trade gathering would offer a most fitting opportunity for the discussion of intercommunal problems. These synods often were called upon to decide matters of a judicial nature[3] in regards to which the complainant found himself unable to obtain the help of his local officials.

In the original Takkanah against plural marriage no provision seems to have been made for exceptional cases. It was doubtless believed that a synod similar to the one that had established the rule could amend, abrogate or even repeal it. No one could have realized beforehand the veneration in which succeeding generations would hold the great German scholar. As early as the time of Rashi, it was believed that none of R. Gershom's suc-

[1] *Gittin* 4.1; *Rosh Ha-Shanah* 4.1.

[2] See the Takkanah of R. Tam against casting any slur on the validity of a writ of divorce (See Appendix A, below, p. 105).

[3] See *Teshubot Hakme Zarfat ve-Lotir*, p. 15.

cessors could hope to equal him in authority.[13] Yet it soon became evident that there were cases in which exceptions would have to be made. If for instance a wife had accepted baptism, and had left her husband's home, it was clearly wrong to compel the injured husband to remain loyal to one who had proven herself faithless not merely to him but to her people and her God. Especially was it unfair to expect the husband to remain bound to her, since most cases of conversion of this type were results of illicit relations with Christian knights and nobles. In the Rhine communities it was assumed without question that the ordinance protecting the Jewish home against the evils of polygamy had never been intended to protect the interests of women who had left the Jewish fold. As soon as it was established that a woman had willingly accepted Christianity her husband was free to marry a second wife. It was, indeed, the duty of the elders of the community to make certain that it was a case of voluntary abandonment and not involuntary captivity, and that the wife was not secretly loyal to her family. The numerous cases of enforced baptism made great care necessary in deciding whether a woman was living among Gentiles by force or of her own will. But if her guilt was established, no ceremony was necessary to suspend the *herem*.[2]

According to the later Austrian custom the husband in such a case was required to execute a writ of divorce which was accepted on behalf of the wife by some person appointed by the Court to act as her agent. This procedure of course involved the setting aside of R. Gershom's ordinance against compulsory divorce. But even more than that it did some violence to the Talmudic principle that the agent for the wife must be appointed not by the Court but by her. It was held, that while ordinarily divorce was a disadvantage for the wife, in that it deprived her of her marital rights, and that therefore she had to be aware of the fact in order that it might be valid; in this instance

[1] Mueller, *Teshubot Hakme Zarfat ve-Lotir*, 11b.

[2] Isserlein *Pesakim* 256; compare Ras. R. Joseph Colon, 141, 2.

since she lived among Gentiles and was disloyal to her husband, she would be saved from the gross sin of adultery by being formally freed, even without her knowledge or consent, from the legal and religious bonds of marriage. It was, therefore, to her advantage to be divorced, and the divorce could take effect without the presence of herself or her appointed agent.

As time went on other difficulties appeared in the way of the new law. There was the matter of the Levirate marriage. If one of two brothers dies childless, the Bible enjoins on the survivor the duty of marrying the widow.[1] If the latter happened to be married, the question arose whether the Biblical law or the *herem* of R. Gershom was to be given precedence. Since in early times the Levirate marriage had fallen in disuse in France,[2] the problem existed only for the Jews of Germany. The general opinion of the German Rabbis forbade the marriage in such a case, since the Bible permits the alternative of the ceremony of *Halizah*. Indeed the German communities ordained that the surviving brother could under these conditions be compelled to perform the *Halizah*.[3] On the other hand, R. Jacob Molin, in the fifteenth century, would in such an emergency inform the surviving brother that he was free to marry the widow.[4] This, however, may have been a mere fiction. R. Judah Mintz, living in Italy, in the sixteenth century, marshalls a host of French and German authorities forbidding the Levirate marriage when it would involve bigamy.[5] On the other hand the Spanish authorities, who, while not accepting the ordinance of R.

[1] Deuteronomy 25.5.

[2] *Kol Bo* 78; Res. R. Hayyim Or Zarua 146.

[3] RMP 866 end, but compare *Sefer Ha-Terumah* of R. Baruch, end.

[4] *Maharil*, Laws of *Halizah*. On the other hand R. Eliezer b. Samuel of Metz, one of the most famous of the pupils of R. Jacob Tam, was accustomed to suspend formally the *herem* of R. Gershom against plural marriage in order that the levir might be quite untrammeled in his decision to have the *halizah* performed. See *Sefer Ha-Parnes*, 355; *Hagahot Maimuni, Gittin*, 4.1; *Mordecai, Yebamot*, 12.57.

[5] Responsum 10

Gershom for their own communities enforced it on German Jews who emigrated into the southern countries, declare that the ordinance does not at all apply to cases where the Biblical law is involved. They even go further and state that since procreation is a Biblical injunction, a person who is childless after ten years of married life, may marry a second wife.[1] One German authority agrees with these Spanish scholars, and quotes a decision of R. Gershom himself, permitting a second marriage in such a case.[2] R. Baruch,[3] a famous German Rabbi of the first half of the thirteenth century and author of an important code, also declared that R. Gershom permitted a second marriage under these circumstances. Yet a contemporary of his, R. Eliezer b. Joel Ha-Levi,[4] insisted that the ordinance applied even to the case of the childless marriage.

The matter must have been confused in very early times. In order to meet the difficulties, the French Rabbis (perhaps in the generation immediately following R. Gershom) established the method of permitting the ordinance to be suspended by the agreement of one hundred scholars living in three different provinces. It was their belief that certain emergencies justify the setting aside of the ordinance, and that there is no need of enumerating such cases, but that it had better be left to the judgment of a large number of scholars in any generation. The requirement that they be not of the same province only helped to make it certain that greater deliberation would be used in the suspension of the *herem*.

The ordinance of R. Gershom gained the widest acceptance. Its authority among the people was greater than that of a Rabbinic law. The writer of the "Book of the Pious",[5] living in Germany in the thirteenth century, demands the same respect for Biblical and Rabbinic laws

[1] See Res. R. Solomon ibn Adret, ed. Rome, 280.

[2] *Tasbez* (German) 470; compare Responsa of R. Meir b. Baruch ed. Prague, 685.

[3] See *Kaptor Va-Perah*, ed. Luncz, p. 178 and p. 782.

[4] Quoted in Res. R. Solomon Luria, 65.

[5] Old edition, 49.

as is paid to the ordinance of R. Gershom. Somewhat later, R. Hayyim *Or Zarua*[1] pleads similarly, when he says that if we compel a bigamist to leave his second wife although he has transgressed only an ordinance, how much more ought we to insist on the separation of those who marry contrary to Rabbinic law.

So far-reaching was the influence of this ordinance, that, as has been said, the Spanish authorities often found themselves compelled to enforce it on such German Jews as came within their jurisdiction. They did, however, attempt to lessen the rigor of the rule even for the Ashkenazic Jews. R. Solomon ibn Adret practically nullified the effect of the ordinance by declaring that it lapsed automatically in the year 5000 A. M. (i. e. 1240 of the Common Era).[2] This view, which Ibn Adret based on rumors that came to him from German scholars, is unsupported by any evidence and is entirely untenable.[3] Strangely enough the authority of Ibn Adret was such that the statement has found its way into many important codes, and yet Jewish consciousness felt the importance of the Takkanah so deeply that in spite of its supposed termination, it is still observed as binding law in all communities of Ashkenazic Jews.

b. COMPULSORY DIVORCE

Inextricably bound up with the Takkanah against bigamy is the ordinance promulgated by R. Gershom against compulsory divorce. It is well-known that both Biblical and Rabbinic law leave the matter of divorce almost completely in the hands of the husband. It is true that there are cases in which the Talmudic scholars assumed the authority to compel a husband to divorce his wife if she demanded it, but hardly any limitation was put upon his right of divorcing her if he pleased. The Rabbinic theory seems to have been that the necessity of paying the *Ke-*

[1] Res. R. Hayyim Or Zarua, 182.
[2] Quoted by R. Joseph Colon, in responsum 101.
[3] See p. 142 note 2.

tubah would of itself prevent divorce under ordinary conditions. But that protected only the wives of the poor; what of the wives of the wealthy? It was assumed that wealthy parents probably would protect the interests of their daughters by demanding that the husband at the time of the marriage settle upon her a larger *Ketubah* than the minimum. Yet the situation was unsatisfactory. R. Gershom met this difficulty by forbidding any husband to divorce his wife against her will. For the Rhine communities, he ordained further that no divorce should be executed without the consent of the representatives of the communities.[1]

The Takkanah against compulsory divorce was strengthened by later generations, to the extent that it was ordained that any writ of divorce delivered in violation of it was null and void. The doctrine that a Court may nullify a divorce executed otherwise than in accordance with its rules, is Talmudic.[2] This doctrine was generally recognized in Geonic times.[3] It is open to serious question, however, whether R. Gershom would have assumed either for himself, or for a synod called under him, the right to declare null a divorce executed according to the law of the Talmud. Even the later authors whose respect for the memory of R. Gershom gave them the courage to hold a compulsory divorce ineffective did this only to the extent of prohibiting the husband from remarrying, but for every other purpose they recognized its validity.

c. ORDINANCE AGAINST INSULTING PENITENT CONVERTS

The number of forced conversions in R. Gershom's day must have been considerable in view of the Takkanah he made prohibiting anyone to insult converted Jews after their return to Judaism. The Takkanah protected not merely those who had been converted by physical

[1] Part II, p. 247.
[2] *Ketubot* 3b.
[3] Mann, *Jewish Quarterly Review* (N. S.) 7.471.

force, but also such as had been led to forsake their people and their religion because of other circumstances. The text of the ordinance is no longer in existence, indeed, it seems to have been lost as early as the time of Rashi, who is the first to allude to the Takkanah.[1]

d. ORDINANCE PROTECTING JEWISH TENANTS

Another Takkanah[2] generally ascribed to R. Gershom is that forbidding any Jew to rent a house of a Gentile, who had unjustly ejected a former Jewish tenant. This Takkanah would seem to point to the existence of very cramped Jewish quarters even in those early centuries. It was only by agreeing not to rent houses from which Jews had been unrighteously evicted, that the Jews could in any way defend themselves against ruthless house-owners. This ordinance was re-enacted in a more rigorous form in Italy in the sixteenth century. The establishment of Ghettoes in that country during that period made some such law all the more necessary.

e. ORDINANCE PROTECTING THE PRIVACY OF LETTERS

One of R. Gershom's Takkanot, which was quoted very often in modern times in continental countries, was that forbidding a person to read the letters of another without permission.[3] This ordinance was of especial importance in days when mail delivery by government agencies was practically unknown, at least in Europe. Letters of a private character often had to be sent through messengers, whose curiosity would only be too likely to tempt them to break the trust that had been placed in them. It is additional evidence of the religious reverence gained by these ordinances, that it was expected that they would command respect in cases which the ordinary legal methods could not reach.

[1] Mueller, *Teshubot Hakme Zarfat Ve-Lotir*, 11b; see also below p. 179.
[2] Part II, p. 181.
[3] Part II, p. 189.

f. ALLEGED ORDINANCE AGAINST EMENDING THE TEXT OF THE TALMUD

R. Jacob Tam, living in the twelfth century, reports that R. Gershom "cursed" those who would in the future tamper with the received text of the Talmud.[1] On the basis of this report the impression has spread that the prohibition of emendations was one of R. Gershom's ordinances. We know, of course, that R. Gershom was very zealous for the care of the text of the Talmud.[2] But even R. Tam merely says that R. Gershom *cursed* those who would change it, not that he declared any ordinance against it. Moreover most of the Tosafists indulged in emendations, and some of them introduced their changes into the text itself. Is it possible that all of these men dared to transgress an injunction of R. Gershom? The word *lat* "curse" is itself merely a figurative expression for "denounce," and it is used by R. Tam in that sense, just as it often occurs in the Talmud.

2. CIVIL ORDINANCES OF R. GERSHOM

Of a different character from the Takkanot thus far discussed, are those which have been compiled in a group, usually called "Takkanot R. Gershom".[3] R. Gershom apparently strove not merely to gather the representatives of the communities in synods in order to pass upon measures which he thought salutary, but he desired to establish a permanent organization of communities, such as might continue to function after his death. The code of Takkanot of R. Gershom on examination appears to be a crude miniature constitution for such a confederation. It does not contain all the elements that we would expect to find in a constitution, since it assumes the existence of many institutions, and merely attempts to give official assertion to some important aspects of the Federation as it was conceived.

[1] Introduction to the *Sefer Ha-Yashar*.
[2] See above p. 20, note 3.
[3] See p. 111.

The analysis of the text in the form that it has been received must be deferred to Part II.[1] Of the twelve or thirteen sections of which it consists in most of the recensions, a nucleus of five are certainly the work of a synod that gathered under R. Gershom. These established the following rules:

a. The jurisdiction of the local courts of the communities is to extend not merely to the members of the community but to any Jew who may happen to come within their city.

b. The right of interrupting the prayers because a defendant refuses to come to Court, or because the Court refuses to summon a defendant is guaranteed, but it is limited in the following manner. The plaintiff must three times make complaint in public at the end of the service if he finds no response from the community, he may prevent them from holding public worship until his wrongs are righted.

c. If the synagogue-house is owned by a member of the community he may not prevent any other member from attending public service, except by closing it to everyone.

d. Anyone losing an object may publicly declare a *herem* in the synagogue, compelling any person having knowledge of the finder, to inform against him.

e. The minority in any community must accept the ordinances of the majority and abide by them.

These ordinances cannot be considered merely civil *Takkanot*, they are of a constitutional nature. They specify and guarantee certain rights of the individual. When we think of the power of the Mediaeval community and of the fact that for the Jew it was the only source of justice, we will realize the importance of these ordinances. In view of what has been said above about the *herem beth-din*, i. e. the authority of the local court, it was a matter of the highest importance that this authority be extended not merely to members of the community but also to transients. One could always rely on the public opinion

[1] See below p. 111.

of a community to compel a fellow-member to do one justice, but what could one do against a member of another community, or one who had fled his own community and settled in another? The right of appealing to the Court of any community in whose jurisdiction a defendant might happen to come, provided a method of dealing with many whom the courts previously had been unable to reach.

The privilege of interrupting the prayers is regulated and thus recognized. Its importance has already been analyzed. But no less important in a country of small and poor communities was the regulation forbidding the owner of a synagogue to tyrannize over any member of the community by denying him the right to enter the synagogue. In times when public worship every day was as common and indispensable as one's meals, it was a real spiritual loss for a person to be prevented from taking part in the public service. The ordinance declared that one who closed a synagogue to one member closed it to all. If the owner wanted his house to continue as the house of prayer he would have to admit the people whom he disliked on the same terms as the people whom he liked.

It may be thought that the section declaring the will of the majority binding on all members was unnecessary. So indeed it might be in a community where self-government is inculcated in a child almost from the nursery. In a community where all government came from Kings and Emperors, the rule of the majority was by no means firmly established. There were many authorities who claimed that no communal ordinance could be accepted as authoritative unless it had been unanimously adopted. Yet it was obvious that if there was to be any local government at all, the rule of the majority would have to be established. It was a question debated for centuries after R. Gershom, whether the right to make such ordinances by will of the majority is based on the Talmud or not. While the academic discussions were continuing, the rule established by R. Gershom was in practical effect, bringing life and vigor into German communal life.

3. THE FEDERATION OF COMMUNITIES AFTER THE DEATH OF R. GERSHOM

The care with which R. Gershom built is evidenced by the strength of the federation after his death. Although the empire was disunited, and travel was difficult and dangerous, while local patriotisms tended to divide the Jewish community, nevertheless the synods apparently continued to meet even after R. Gershom could no longer lead them. It was such a synod doubtless that provided for the suspension of the ordinance against plural marriage in certain emergencies. No synod would have dared to change that ordinance in any way more than a generation after the time of R. Gershom. Even Rashi would not have been bold enough to limit the scope of one of the ordinances passed under supervision of the great scholar. It must have been therefore within twenty-five or thirty years after his death that the change in that law was made.

Nevertheless the lack of a great leader ultimately brought about the disintegration of the federation. Only the Rhine communities, and a few smaller communities that were subsidiary to them, continued in the closer union that had been perfected under R. Gershom. But of their activities little is known. The records of the period are scanty at best, and its history can be reconstructed only by conjecture. The schools at Mayence and other parts of Germany carried on their works but the time was approaching when the German communities would have to admit that the center of Talmudic scholarship had removed to France. The place that had been filled in the early part of the eleventh century by R. Gershom, was vacant till Rashi arose in the second half, a new master-builder in Israel.

CHAPTER IV

THE FRENCH SYNODS

1. RASHI

A generation elapsed between the time of the death of R. Gershom and the general acceptance of Rashi[1] as a leader in Israel. It is a generation of which we know little. We hear of such men as R. Jacob b. Yakar, but we know little of what progress was being made in carrying on the work so auspiciously begun by the great master. We hardly know of any of Rashi's public activities. The commentary which is his everlasting monument—for he was indeed the greatest of commentators—was written in the quiet of his study. Whether he took any more immediate part in the solution of the social problems of his own generation is not known. We are told by his grandson, R. Jacob Tam, that he ordained[2] that if a Jew lent money to another on a half loan, half investment basis,—that is, on the understanding that the money invested should be used by the agent, and the profits divided between himself and the principal,—in such a case Rashi ordained the principal could only be taxed one half of the money which he had invested. In other words, the basis for taxation purposes was to be income-producing capital.

Such a Takkanah is found in a collection of responsa of R. Meir b. Baruch in which it is said to have been copied from a manuscript of "R. Solomon of Troyes".[3] The ordinance begins with the words, "we the inhabitants of Troyes and its surrounding communities." It therefore would seem that the ordinance as published was in fact

[1] See Liber, *Rashi*, Jewish Publication Society, 1906 and Lipschutz, *R. Shelomo Yizhaki*, Warsaw, 1912.

[2] Part II, p. 148.

[3] Res. R. Meir b. Baruch, ed. Berlin, p. 320.

passed at a local synod of the communities near Troyes. R. Tam had occasion to quote only one section,[1] but doubtless he knew the whole of the text. As the ordinance was intended only for Troyes and its immediate vicinity, it is not surprising that it is not quoted more extensively.

It provides that no Jew shall take advantage of any exemption offered him by a feudal lord to escape taxation by the Jewish community.[2] Houses, fields, vineyards, utensils and money lent to Jews by Gentiles were exempted from taxation. Gold and silverware, jewelry and rings were to be taxed at half their value; non-interest bearing loans were exempt from taxation for one year, but thereafter were subject to tax. It was assumed of course that a loan for more than a year was either a gift or a fiction used to evade the payment of the tax. New residents were not to be taxed until they had done some business in the city. Gifts of money to one's children were taxable, if the children lived in the same city. If one accepted books as pledges for a loan, the lender was taxed on as much of the capital as was represented by the books.

THE FIRST CRUSADE

We know of no further action by Rashi in the matter of convening synods. Yet the times in which he lived must have demanded serious action. Towards the end of his life the First Crusade was being organized. At the Council of Clermont in 1095, Pope Urban II issued a call to a Crusade for the purpose of rescuing Jerusalem from the hands of the Infidels. Bands began to gather under Peter the Hermit, who, starting in France, marched northward through Germany on his way to the Holy Land. The Jews of France feared that before proceeding to make war on the distant Turks, the Crusaders might attack the neighboring Jews. They therefore sent a letter to

[1] *Mordecai*, Riva, *Baba Kamma*, 10:248; and *Nimmukim* of R. Menahem Merseburg, printed at the end of the Hanau edition of Res. R. Jacob Weil.

[2] See Part II, p. 243, section 15.

the Jews of Germany calling on them to join them in prayer and fasting that the calamity might be averted. It is safe to say that other and less spiritual means were taken to prevent the threatened disaster. Letters were sent to Germany advising a careful welcome to Peter and his followers. When we hear of the ravages these bands committed in Hungary, we may well be surprised at the comparative quiet with which they marched through France and Germany. Even the second and third bands of this Crusade passed through France without committing any serious outrages, although they mercilessly ravaged the Rhine cities.

The letters that were sent from France to Germany must have been authorized and the money that was needed to gain the favor of the Crusaders raised by synods of some kind. But no trace of these has been left, so that the Rashi's part in these activities is completely unknown. The legend of Rashi's relation with Godfrey of Bouillon is hardly worth mentioning, and we have no more trustworthy accounts of Rashi's activity in these late years.

CHANGE IN THE ECONOMIC AND SOCIAL STATUS OF THE JEWS RESULTING FROM THE CRUSADES

The Second Crusade like the first brought little suffering to the Jews of France. To the Jews of Germany, with their bitter memories of 1096, it brought infinite terror but nothing worse. The Jew-baiters were successfully prevented from repeating the atrocities of the First Crusaders, and German Jewry breathed more freely as the soldiers of the Cross left their land.

But the Crusades left a deep impress on the economic and social conditons of the Jews of France and Germany. They had become less the tradesmen, and more the money-lenders of their respective countries. We have seen[1] how the precarious state of land-ownership in the days of R. Gershom was driving the people from the soil; the ownership of merchandise had by now become almost

[1] Chapter I, p. 11.

as insecure. The expulsions from the towns made the moving of goods very difficult, and while debts too could not easily be collected, yet the huge interest taken in the Middle Ages in part offset the risks. But more important than this, was the rivalry in trade that had been born out of the Crusades. The Crusades re-introduced Western Europe to the Levant, and now many a Christian could engage in commerce. Naturally this tended to drive the Jews from ordinary trade into money lending.[1]

There is on the other hand, a tendency to overestimate the number of Jews who became moneylenders. The impression gained from reading books like The Merchant of Venice and Ivanhoe is that all Jews were usurers. The authors of these books are of course not to be blamed for they merely reflect the popular notion. It is a little true that every Jew, or even that the majority of Jews, were usurers, as that every Jew is called Isaac. Yet because there are more Jews named Isaac than Gentiles, the ordinary Christian will call the ordinary Jew by that name. Even though the proportion of moneylenders among Jews to their total number were only slightly larger than the proportion of moneylenders to the rest of the general population, the belief would soon spread that all moneylenders were Jews. In times when statistics were unknown the belief would soon gain vogue that all Jews were usurers. The increased competition from the Christians who had become accustomed to travel during the Crusades, the hazard now attached to the possession of movable property and the rise of feeling in the Church opposed to lending money on interest would sufficiently account for the fact that a larger number of Jews became moneylenders than did Gentiles to whom other and more reputable occupations were open.

Yet the Jew, innocently forced into this hateful traffic by the economic conditions which he could not control, was the more hated for taking the only path that had

[1] See Abrahams, *Jewish Life in the Middle Ages*, pp. 237–244 for a fair and impartial account of the spread of moneylending among Jews.

been left open to him. Not only had the persecutions to which they had been subjected during the Crusades made the Jews a group definitely-recognized as socially inferior, but the general belief that all of them were usurers helped to provoke the mass-hatred against them. The war-animus which had been aroused by the Crusades could not easily subside, and spent itself not only in battles and wars at home, but in ravages against the "unbelieving" Jews. The condition of the Jew was thus entangled in the most unfortunate of vicious circles. The more he was oppressed, the more he had to leave ordinary trade in order to engage in moneylending, the more he engaged in moneylending the more was he oppressed.

Jewish leaders must have realized the great danger that confronted them, and sought to meet it. But there are no records of any synods, if there were any documents they have been lost. There is no trace of any gatherings of Rabbis during this period in the responsa or other legal literature that has survived. Perhaps, on the other hand, the French and German Jews were without capable leadership in these trying times. Rashi had died in 1105. His grandson, R. Samuel b. Meir,[1] who succeeded to his position as the leading Jewish scholar, was a student, but hardly a man of the world. He could lend the prestige of his vast erudition to the efforts of another but he seems to have lacked initiative and organizing ability. He completed his grandfather's commentaries on *Baba Batra* and it may be that his commentary on the last chapter of *Pesahim* was intended to complete unfinished work of Rashi.[2] His discussions of the meaning of the Talmud are everywhere illuminating, but while these literary activities were very important and of lasting influence, conditions called also for immediate action.

No leader of the type that was needed appeared till R. Samuel's younger brother[3] reached maturity. No less

[1] For his life, see Rosin, *R. Samuel b. Meir*, Breslau, 1880.

[2] Dienemann, *Lewy Festschrift*, p. 259.

[3] For his life see Weiss, *Toledot R. Jacob Tam* (1883) and A. Berliner, in J. J. L. G. I, (1903) p. 1, *seq.*

a scholar than his brother, R. Jacob Tam (b. 1100, d. 1170) had the genius of a R. Gershom. He had been but a lad of five when his illustrious grandfather had died, and he had been taught by his older brother. But before many years had gone by, his fame equalled that of his master. His criticisms of Rashi attracted attention far and wide. Quick, fearless and independent, he was gifted with extraordinary insight into the needs of the people. A characteristic incident shows the difference between the two brothers. R. Samuel in his piety always walked about with his eyes on the ground. It thus happened that on one occasion, he ordered a carriage and since, according to his custom he did not look up, he failed to realize that it was driven by a horse and a mule. Talmudic law forbids pairing animals of different species not merely for reproduction but in their work. Just as R. Samuel was about to enter the carriage and unknowingly transgress the law, his younger and more circumspect brother happened to pass, and laughingly reproached him saying, "Be not over-pious, lift up thine eyes and behold there stand a horse and a mule before thee." [1]

Even in his interpretations of the Talmud R. Tam always kept in mind the needs of the people. Thus he justified the custom that permitted Jews to engage in commerce with Christians during the seasons preceding their religious festivals, although commerce with idol-worshippers under like circumstances is forbidden. [2] He was inclined to permit a Gentile contractor to build a house for a Jew on the Sabbath, [3] and to mitigate the rigor of some Rabbinic laws, such as that forbidding the cutting of one's hair during the festival week. [4] From such a man we would expect an active interest in Jewish communal work.

About the year 1150 he persuaded his brother, R. Samuel,

[1] *Hagahot Mordecai, Erubin*, chapter I, end.

[2] *Tosafot Aboda Zara*, 2b.

[3] *Ibid.* 21b.

[4] *Tur Orah Hayyim*, 531, compare *Hagahot Asheri, Moed Qatan*, chapter III, beginning; and *Hagahot Maimuni, Hilkot Yom Tob* chapter VII.

to join him in requesting all the communities not only of France but also of Germany, to send representatives to a synod that was to meet at Troyes, to discuss some of the new conditions that had arisen as a result of the Second Crusade. The German communities as well as those of France responded, and the conference was attended by men of such eminence as R. Eliezer b. Nathan of Mayence and R. Eliezer b. Samson of Cologne.[1] It was indeed a promising moment in Jewish life, when the representatives of France and Germany gathered to discuss the problem before them. We have an ordinance[2] that was the result of their deliberations, but it is doubtless only one of several decisions taken. It is the only ordinance the text of which has been preserved, but it can hardly be believed that the rabbis would have undertaken all the dangers that were encountered in travel from country to country in the twelfth century, merely to publish a Takkanah against informers. As in the case of other synods, we must assume that the practical steps that were taken to meet immediate exigencies were either not recorded, or the records were lost by following generations, while we have the decisions that were retained because of their Halakic importance.

The text of the ordinances which we have, deals with the problem of the informers. It forbids any Jew to bring litigation against another before non-Jewish courts; and

[1] Their names are mentioned in connection with this synod only in the abstract of the Takkanah, in RMP 1022. The defective punctuation of Bloch's reprint of this edition has misled the writer of the article on Cologne in *Germania Judaica*, p. 74, into thinking that R. Eliezer b. Nathan and R. Eliezer b. Samson were members of the synod of 1220. The contributor takes pains to show that it would have been impossible for R. Eliezer b. Nathan to be present at that council since he died fifty years earlier, in 1170. The writer might have noticed that R. Tam also died in 1170, and that he could not have been present at the council of 1220. This would have led him to read somewhat more carefully and realize that it is not stated that either R. Tam or R. Eliezer b. Nathan or R. Eliezer b. Samson were present at the Council of 1220, but rather that they were representatives of various communities at the council of Troyes held about 1160.

[2] For text, translation and notes, see Part II, pages 152-158.

moreover, it enjoins on any Jewish plaintiff whose cause is brought before Gentile authorities, even without his knowledge, the duty of indemnifying the defendant against any harm threatened him by these authorities; finally it forbids the acceptance of any office in the Jewish community at the hands of non-Jewish authorities.

This synod must have been considered a success for it led to the calling of another, this time after the death of R. Samuel, that is, after 1160. Again the synod met at Troyes. It was attended by representatives of communities of Normandy and Poitiers as well as of the kingdom of France, proper.[1] The text of the decisions which has been preserved, provides that the Takkanah regarding the return of the dowry, which had previously been in vogue at Narbonne,[2] should be extended to apply to the remainder of France. If a woman died within a year of her marriage without issue, any gifts given to her and her husband by her family, were to be returned to them. Moreover, if any dowry had been promised to the husband, and he failed to obtain it during the life of his wife, he was not to collect it after her death.

Some of the names of those who were present at the synod are preserved. They are given somewhat differently in different sources and will perhaps be best discussed in connection with the texts.

There are several other Takkanot of R. Tam which were no less important. We do not know whether they too were adopted at one of these councils or are the decrees of other gatherings, or whether they were adopted by

[1] For text, tanslation and notes, see Part II. pages 163–167.

[2] The statement made by Gross, *Gallia Judaica*, s.v. *Troyes*, that the community of Narbonne was represented at this synod must be revised. It is based on a misreading of a passage in *Mordecai, Ketubot* 5.155. Anyone reading the texts reprinted in Part II, and then comparing them with the text of *Mordecai*, will see that the community of Narbonne was *not* represented at the synod. Weiss in his *R. Tam*, seems likewise to have been misled by the somewhat obscure passage in *Mordecai* into thinking that the Takkanah was a responsum to the community of Narbonne.

correspondence. Of some we have the text, others we only know from quotations.

An interesting ordinance is that which undertook to regulate the length of time which a person might absent himself from home. From early times it had become customary for those who aspired to Jewish scholarship to leave their families and to give themselves unreservedly to study in the quiet atmosphere of the great academies. The wives supported themselves as well as they could, suffering patiently in the expectation of sharing with their husbands the bliss that is stored away for those who deny themselves the pleasures of this world for the sake of the Torah. The most famous case was that of the wife of R. Akiba,[1] but she was merely typical of a large number of pious women who made the preservation of the Torah in Israel possible amidst the perils that surrounded it. The custom became even more prevalent in Germany and France in the Middle Ages. Besides these cases where the husband left his wife with her consent and for ideal reasons, it frequently happened that men left their homes out of malice. The breaking up of families thus became a serious matter. In the Talmud we already find restrictions on the privileges of the husband in this respect.[2] R. Tam's ordinance,[3] only reemphasizes and defines these restrictions. It is of some interest to note that R. Tam felt that the law would be more respected it it were re-enacted as an ordinance. The decisions of the Synods must have enjoyed great prestige in Israel when one could think that their words would carry more weight with the people than a statement of the *Mishna*.

A better known Takkanah of R. Tam is that forbidding anyone to cast a slur on the validity of a divorce after it had been delivered in a Jewish court. The practice of finding technical irregularities in such documents was widespread and was a source of endless trouble throughout the history of Rabbinic Judaism. So complicated are the laws of divorce that a clever person might without

[1] *Ketubot* 62a.
[2] *Ketubot* 5.6.
[3] Part II, p. 167–170.

serious difficulty discover a flaw in most writs of divorce.[1] The results of the arousing of suspicions with regard to a *Get*[2] were most serious. The divorced wife might have married again. She and her new husband might have been living happily for years and become the fond parents of innocent children. Then someone out of malice would raise the cry that the wife's divorce had been irregular in such and such a detail, and that consequently she had never been truly divorced, her second marriage was void, and her children illegitimate. There was even the possibility that a cruel husband might at the time of the divorce intentionally introduce some irregularity into the proceedings so as to make trouble for the unfortunate wife in after years.

R. Tam in his decree prohibited such action. As soon as a divorce had been accepted in a Jewish court, the matter was closed. Whoever attempted to re-open it was to be declared excommunicated. If he knew of any irregularity it was his duty to protest before the delivery and to the original court; his silence at the time established a conclusive presumption of guilt against him. The text of the Takkanah has been lost, but we have an abstract of it[3], whence we know that it also was adopted at Troyes, and that one of the main associates of R. Tam in the enactment of this Takkanah was one R. Moses, whom Gross identifies with R. Moses of Pontoise.[4]

[1] J. L. Gordon, the modern-Hebrew poet, has portrayed the conditions surrounding and resulting from such an over-emphasis on technicalities in his *Kozo shel Yod* (collected works, vol. 4, p. 50). A similar condition exists in the English law of wills, and the numerous litigations arising as a result of them form an almost exact parallel to the litigations arising under the Jewish law of divorce. Yet it is difficult to waive technicalities in such matters. For example, see Isserlein, *Pesakim*, 14, where the case arose of a person whose name was *Gershom*, but who had divorced his wife with a writ where he was called *Gershon*. Since *Gershon* and *Gershom* are distinct names in the Bible it was quite impossible to accept such a divorce as valid.

[2] *Get*, meaning *writ* in a general sense, is often used to designate the writ of divorce in particular.

[3] See below p.105, where the abstract of this Takkanah is reprinted from a manuscript and from *Mordecai*, *Gittin*, 4.155.

[4] Gross, *Gallia Judaica*, s. v. *Pontoise*; and compare *Revue des Etudes Juives*, 64.281.

Two provisions of the ordinance are cited: first, that no one may raise any objection to the validity of a *Get* after its delivery and acceptance; second, that no one who was not present at the divorce, may afterward object and say, "Had I been present I would have done so and so", or "I would not have permitted this and this witness to sign". R. Mordecai Yaffe (16th century, Poland and Lithuania) seems to have overlooked the second part of the Takkanah, for in a responsum[1] he denies that there was any objection to one raising a claim against the validity of a divorce if he was not present. His contemporary, R. Moses Isserles, made another exception to the rule of the *herem*.[2] In one case R. Tam himself insisted that a second bill of divorce be delivered to the woman because there were some who complained that the first was not valid.[3] It is not known, however, whether this happened before or after the establishing of the *herem*. If it took place before that the case can have no importance for us. If after the synod, it would mean that while R. Tam announced a *herem* against those who would raise a cry of invalidity against a divorce, he admitted nevertheless the need for a new divorce. His Takkanah then did not undertake to interfere with the law as established. This inference is very likely correct, for it is hardly credible that R. Tam should undertake to permit a woman to marry who was shown not to have been divorced properly.

A very important matter with which R. Tam was called upon to deal was that of the Jew who became surety for another to a prince or noble in order to obtain for him the right to leave the country. This always involved heavy risks not only to the Jew who was trying to save his fellow, but to the whole community. Thus the baron might suspect that such and such a person intended to leave his country. Not wishing to lose the source of income which even a poor Jew might represent, the baron would grant him leave of absence, only on con-

[1] Published in Res. R. Meir Lublin, 123.

[2] Res. R. Moses Isserles 55.

[3] *Gittin* 90a.

dition that some other Jew be responsible for him. It would not be very difficult for an individual to find a tender-hearted fellow-Jew to pledge for him. It was the general rule that in such cases the guarantor could demand from the freed Jew full compensation for any suffering that might come upon him through the default of his charge. This would appear to us to be but common justice, yet it was the subject of no small amount of litigation. The defense usually given by the defaulter was that the noble used his failure to re-appear merely as a pretext for extorting money from the guarantor and that, had the noble lacked that pretext, he would certainly have found another. That was no doubt true, yet it is also true as R. Meir b. Baruch says, that this defaulter was the means of the "driving the lion into the property of his fellow."[1]

The following are the circumstances which occasioned this peculiar Takkanah.[2] Towards the end of the twelfth century the king and the nobles of France, began to develop the theory that the Jews were the property of the governing power of the land in which they lived. The nobles thus felt empowered to refuse to permit a Jew to leave their land, without depositing a pledge that he would return. For any Jew to go bail for another, under the circumstances, would be to admit the right of the nobles in this matter. R. Tam and his colleagues doubtless felt that it were better to undergo all the inconveniences and trouble that might result from a refusal to recognize the ownership of their bodies, rather than to submit to virtual enslavement. It must be admitted, however, that while the Takkanah was a wise measure, it failed in its purpose, for the king and the barons did ultimately enforce their power over the Jews. They became little better than serfs in all of France, and their condition became steadily worse till they were finally expelled from the country in 1306.

[1] See Res. R. Meir b. Baruch of Rothenburg, ed Prague, 495, 725, 977; ed. Cremona, 294, 296; *Mordecai Baba Kamma*, 10.160; and Res. *Shearit Israel* 32.

[2] Printed in Res. R. Hayyim Or Zarua 179; Res. R. Meir b. Baruch, ed. Rabinowitz 114 and reprinted below, p. 106.

CODIFIED TAKKANOT OF R. TAM

Just as R. Gershom left besides his Takkanot on ceremonial matters, a compilation of ordinances, even so R. Tam besides establishing the ordinances described, was the author of a code of ordinances. Unlike the code of R. Gershom, however, this is not entirely of a constitutional nature, and its various sections do not materially differ in character from his other ordinances. They have been preserved to us in several recensions, in each of which there are numerous additions from other sources. The analysis and proof must in this case too be deferred to Part II.[1] It will there be seen that the Takkanot of R. Tam are ten in number:

a. Any community in which a prominent Rabbi is known to have lived, may assume that he established a regular Court (*Herem Beth Din*), so that its Court may compel its citizens to obey the summons and decrees.

b. R. Gershom's *herem* against compulsory divorce does not apply in certain emergencies.

c. The right of interrupting the prayers at any time is guaranteed to one who apprehends defamation before Gentiles at the hands of a fellow-Jew.

d. The Court may compel obedience to a *herem*.

e. All who live in a community for a month, may be compelled to pay their "tithe" i. e. to contribute toward the communal expenses.

f. One may not remove a *Tallit* or *Mahzor* from a synagogue without the owner's permission.

g. One may not strike one's neighbor. (There are several incidental rules regulating the punishment for assault, the most important of these fixes the fine at twenty-five dinars, unless the crime was committed in the synagogue when the fine is to be doubled).

h. No one may cut off a margin of a book, even if it is his property.

i. The laws of summons are fixed; the judge is enjoined

[1] pp. 171–189.

to issue one on request, and the jurisdiction of local courts is defined.

j. The Court may compel anyone to give testimony regarding the property of men who are guilty of abandonment.

While these ordinances do not have the constitutional character of the Takkanot of R. Gershom, it is evident from the work of R. Tam, that he sought to accomplish what R. Gershom had attempted more than a century before him,—the establishment of a central authority in the West. His task was more difficult however, since the number of Jewish communities had increased considerably since the year 1000. The spirit of local patriotism which had hindered and made incomplete the work of R. Gershom, was still prevalent. R. Tam felt therefore that if the council of all the communities was to be given authority, a first step toward that end would be the weakening of the power of the individual communities.

One of the Takkanot of R. Gershom, as we have seen, provided for the rule of the majority in communal affairs. This principle found support in a Talmudic passage empowering the people of a community to establish rules for measures, prices, and wages, and to provide punishment for their infraction.[1] It had generally been assumed that the rules and the punishment were both to be fixed by a majority vote, as practically all questions in Talmudic law are settled by majority. R. Tam, however, gave a novel interpretation to the passage. According to him the decisions of the law must be made by common consent, but the punishment may be fixed by the majority.[2] R. Tam's theory was that while no individual could be bound by the community to obey any ordinance, once he had by consenting to the passage of the ordinance agreed to it, he could be punished for transgressing it. The legislative power of the community was based on nothing more than a vow undertaken by each member to do or refrain from doing certain things.

[1] *Baba Batra* 8b.

[2] *Mordecai, Baba Batra* I. 481; see also responsum quoted in *Mordecai* (ed. *Riva*) *Baba Kamma,* 10.248.

Had this opinion been accepted, the legislative power of the Community would have been seriously limited. For when could one hope to induce all the members of a community to agree on anything? We have seen how some Rabbis protested against the rule which forbade anyone to settle in a city without obtaining unanimous consent to waive the prohibition against settlers from other cities (*Herem Ha-Yishshub*, see above, p. 10). They felt that such a provision made it impossible to have the *herem* set aside in any case. The establishment of any Takkanah would be far more difficult if any individual could, by refusing his assent, prevent its passage.

R. Tam had a remedy for this. The greatest scholars of any generation are in fact the successors of the ancient Sanhedrin, he claimed. They may accordingly promulgate decrees which must then be obeyed by all under penalty of excommunication.[1] It was under this authority, according to R. Tam, that R. Gershom had issued his famous Takkanot, and indeed, the power of the Palestinian Patriarchs was based on no surer foundation than their status as the foremost scholars of their time. Thus, he argued, when it was found that Hillel was a greater scholar than the *Bene Batyra*, they made way before him.[2] R. Tam did not apparently take into consideration the argument against his theory that is presented in the cases of R. Gamaliel II and his son, R. Simeon. It will generally be admitted that R. Akiba and R. Ishmael—not to speak of R. Joshua and R. Eliezer—outshone their colleague, R. Gamaliel, in scholarship, yet he was the Patriarch over them. Moreover when he was removed because of a quarrel with R. Joshua, it was not the greatest scholar that was appointed in his place but rather the young R. Eleazar b. Azariah who was descended from a prominent family.[3] Certainly no one will maintain that R. Simeon b. Gamaliel, who was patriarch in the following generation, was a greater scholar than his contemporaries R. Meir and R. Judah.

[1] *Sanhedrin, Asheri* 2.41.
[2] *Pesahim* 66b.
[3] *Berakot* 27b.

But we are not here concerned with the historical accuracy of the interpretation put forward by R. Tam. Stripped of its argumentative intricacies, the view expounded by this scholar was that the individual communities had no right of legislation, but that the legislative powers were lodged in the hands of the greatest scholars of each generation. This view was radically different from that which had been current in France and Germany before his day. R. Gershom, himself, who had been the first to institute country-wide ordinances in the West held, in a responsum,[1] that the heirs of the great Sanhedrin were the local courts. He held that it was not the scholarship of the Patriarch that gave him the prestige which he enjoyed, but rather the fact that the Sanhedrin over which he presided was representative in one sense of all Israel, and at any rate was recognized as the supreme authority by Jews everywhere. In enforcing the *herem* of a community even when its ordinances seemed to be in opposition to the Talmudic law, he cited those very verses of Scripture which are used in the Talmud to establish the rights of the Sanhedrin in civil matters. As is well known, this is based on the judicial power of confiscation. It is true that R. Gershom attempted to bring about closer co-operation among the communities, but he felt that the central synod which he endeavored to establish only enjoyed its authority by virtue of its recognition by the communities.

R. Tam's views were accepted by some of his contemporaries and pupils, notably by R. Eliezer b. Samuel of Metz.[2] But there also arose opposition to the revolutionary doctrine, especially in Germany. We have responsa [3] [6] signed by two of the pupils of R. Eliezer of Metz, who take issue with the view of R. Tam, and uphold in principle, at least, the older view.

The case whch was the occasion of the response is of sufficient interest to be fully described. The community

[1] *Mordecai, Baba Kamma* 2.257; Mueller, *Teshubot Hakme Zarfat Ve Lotir* 97.

[2] Res. R. Hayyim Or Zarua, 222 end.

[3] *Loc. cit.*, see appendix, p. 107, for the text of these responsa.

of Worms found that many of its tax-payers were escaping their proper share of the communal burdens by taking an oath that their capital (which was used as the basis for the computation of the tax) had been overestimated. In order to remedy this evil, a decree was passed taking away the right of the tax-payer to decrease his assessment by an affirmation under oath. R. Eleazar of Worms and his colleagues sent the matter before the Rabbis of the neighboring community of Mayence, since Talmudic law forbids citizens of a community to be judges in matters where their own community is involved. The Rabbis of Mayence, R. Baruch b. Samuel, R. Judah b. Kalonymos, and R. Moses b. Mordecai upheld the right of communal leaders to establish ordinances with the consent of the majority of the members of the community, but they decided that this power was limited by the obvious truth that in money matters a man cannot be made to pay what he does not have. It is true that the Rabbinic principle is that "one cannot make a decree which the *majority* of the community finds it impossible to endure."[1] That does not apply to matters of taxation, however, where the ordinance can be annulled if it is found to be confiscatory even for a minority. The judges of whether a community had acted within its rights or otherwise were the Rabbis before whom the Community was called to defend its ordinances.

Apparently, this decision which ended with an exhortation to the Community to be lenient with the men, and which failed to give a final decree to either party, proved unsatisfactory for the matter was sent further to R. Eliezer b. Joel Ha-Levi, (Rabiah) then Rabbi of Cologne.

Rabiah lays down the principle that the Communal Board, consisting of the so-called "Seven Best Men," had in their local community as much power in civil matters as the Sanhedrin had over all Israel. They were limited only by the principle that the decrees issued by them must not be too severe for the endurance of the greater part of the community. In order to discover whether in any particular

[1] *Horiot* 3b.

instance they were within their rights or not, recourse should be had to a referendum; if a majority sustained the Board their decision was final. In this Rabiah was clearly following the Takkanah of R. Gershom (TRG 5), which indeed he echoes but does not quote.

While the view of Rabiah was accepted by both parties to this controversy, the principle in dispute was too deep-seated to be settled by any one man. Fifty years later we find the question of the powers of the Community over the individual again a subject of discussion. At this time the foremost authority in Germany was R. Meir b. Baruch of Rothenburg.

At least three cases involving this question came before R. Meir for decision but these decisions do not all follow the same principle. In one case that came before him,[1] a certain community had decided to forbid any but its own members to deal with the Gentile inhabitants of the city. It therefore decreed that any non-member who had lent money to Gentiles of the city, should transfer the debt to a member of the community within a certain time; otherwise the debt would be liable to taxation by the community. R. Meir b. Baruch discusses the matter from two angles. If those who held the debts against the Gentiles had been members of the community at the time of the issuance of the decree they were doubtless bound by it, in accordance with the Takkanah of R. Gershom (TRG 5) that any ordinance passed by a majority of the members of a community is binding on all of them. If they had not been members of the Community when the decree was passed, they were nevertheless bound by it to sell their debts to members of the community provided that they were given sufficient time. In this responsum R. Meir aligns himself completely with Rabiah and the old Germanic tradition that gives the community power over the property of its members; and he adds the novel principle that, provided the community is not unjust, it may even protect its citizens by calling on non-members doing business within its jurisdiction to obey its decrees.

[1] Res. R. Meir b. Baruch, ed. Berlin, p. 209.

In a second case,[1] most of the members of a community, but not all of them, had been present at an election, and had appointed one of their number overseer of religious and communal affairs. This overseer or dictator had levied certain taxes which one member of the community refused to pay, insisting that he was not bound by the action of the majority of the community because he had not been represented. R. Meir held that a man might be bound by the decision of a community in one of two ways: if the decision reached by the community was unanimous, or if the decree was made by a board which had been unanimously elected. In this responsum R. Meir clearly followed the view of R. Tam who required unanimous consent for the passage of any ordinance, but made it practicable by adding to it the possibility that unanimously elected members of a Board might act for the community. This made it possible for a community to legislate. The Takkanah of R. Gershom endowing communities with the power of making ordinances was still effective, for a Takkanah proposed by the Board would be binding on the community even though accepted only by a majority.

The third responsum on this subject appears to have been written by R. Meir b. Baruch,[2] after he had been imprisoned. A certain community—as usual the name has not been preserved—found itself in a curious dilemma. The members could come to no agreement as to the election of the Board, there was constant interruption of prayers, and "justice was cast to the earth". R. Meir ordered the members to assemble, and each one to bind himself by an oath to vote according to what he felt to be the best interests of the community. The board securing the majority of votes was to be considered in power.

It is clear that the German Rabbis felt that they could not accept R. Tam's view without qualification, for there

[1] Res. R. Meir b. Baruch, ed. Prague, 968.

[2] *Teshubot Maimuni, Kinyan* 27, and Res. R. Meir b. Baruch, ed. Berlin, p. 320. In the former text the signature used is העני מאיר בר ברוך which according to R. Solomon Luria was used by R. Meir only after his incarceration (*Yam Shel Shelomo, Yebamot* 4.18).

was no strong central organization in Germany at the time. Nor could they vest unlimited power in the communities since these often worked injustice. Thus the position of the more prominent Rabbis became more and more that of a Court of Appeals to decide whether in any particular case a community had acted within its rights.[1]

[1] Res. R. Hayyim Or Zarua, 55.

CHAPTER V.

GERMAN SYNODS FROM 1196–1250

SYNOD OF 1196

We hear of no general synod in France after the death of R. Tam. The condition of the Jews was deteriorating. We might have expected that the Third Crusade which took place about 1190, would arouse a new interest in synods but we have no information about any attempt to gather the scholars of the period. The Jews were expelled from the domains of the King of France, and the need of receiving the exiles must have helped to undermine their institutions even in those parts of the country where they were tolerated. On the other hand in Germany, the problems raised by the Third Crusade did result in the convocation of a synod under the presidency of R. David b. Kalonymos. This synod met in 1196, probably at one of the large Rhine Communities, Worms or Speyer or Mayence, but nothing certain is known about the place of meeting. Indeed the text of the decisions can be reconstructed only insofar as it is quoted in the Takkanot of later synods, and partly given in a responsum signed by a certain R. David (who may or may not be identical with the President of this synod) and by R. Baruch b. Samuel.[1]

The first matter dealt with by the Council was that of the widows whose husbands had died, and who, having no children, were at the mercy of their brothers-in-law if they wished to receive permission to marry again. The Biblical law requires that in such a case the brother of the deceased shall marry the widow; if he refuses to do so, the widow must summon him before the elders of the town, and make complaint against him for refusing "to establish a name for his brother in Israel." "The elders of the city shall then

[1] *Teshubot Maimuni, Ishut*, 26.

call to him and speak to him and if he stand and say, I like not to take her; then the widow shall come unto him in the presence of the elders and loose his shoe from off his foot, and spit in his face and say, So shall it be done unto the man doth not build up his brother's house".[1] The marriage was called *Yibbum*; the alternative ceremony of the loosening of the shoe, *Halizah*.

Even during Talmudic times the custom of *Halizah* gradually tended to become more common than *Yibbum*. For *Yibbum* is primarily suited for a polygamic society. It presupposes a condition where the status of the wife is not very distinct from that of the slave, for the Levirate marriage (*Yibbum*) is essentially the inheritance by the nearest kinsman of the childless widow together with all the other property of the deceased. In the Bible the status of the wife is already raised. The Levirate marriage is to be performed no longer by any kinsman (cf. the story of Ruth) but by the brother. Yet as Judaism developed it looked more and more askance at *Yibbum* and with greater favor at the alternative *Halizah*.

In Talmudic times there was no longer any odium attached to the *Halizah*. Indeed Abba Saul, one of the *Tannaim* of the second century, recommends it.[2] There are cases where the Rabbis permitted the widow to refuse to marry her brother-in-law and to insist on the *Halizah*. Yet *Yibbum* continued as a custom. It had indeed become very rare, and in France was not practised at all. But according to some of the Rabbis, the Court had no power to compel a brother of the deceased to have the *Halizah* performed, and even those of the Rabbis who felt authorized to use force, preferred not to resort to it. The *Yabam* (i. e. the brother-in-law) therefore had the widow at his mercy. He often used his power to extort money from her. This abuse was not frowned upon as it might have been, since in Rabbinic law, a wife does not inherit her husband's property, but has only a dower right. There would always be difficulty in determining the exact amount due the widow,

[1] Deuteronomy 25.8.
[2] *Bekorot* 1.7.

and so the brother-in-law who used his power against his deceased brother's widow would escape the general condemnation which he so richly deserved.

R. David of Muenzberg undertook to regulate this abuse. He laid down definite rules for the amount to be paid to the brother of the deceased. He was to get one half of the property and give the other half to the widow. Or if he chose, he might take the whole of the property and pay her her dowry. Heirlooms, such as land or books, he might retain. He could not, however, retain any of the property that she had inherited or received from her family. These provisions which became known as the "*Takkanot Shum in regard to Halizah*" soon spread far and wide and entered into the codes. They formed a much needed compromise and served as a solution to a vexing problem. It is true that to us at this date the decree seems to give the brother-in-law an unjust advantage, in that he has the choice of refusing to pay even her dower to the widow if that should be more than half of the total property of the deceased. Measured by its success, however, the Takkanah was certainly a true reform. Henceforth the power of the *Yabam* was to some extent controlled.

It seems that this synod also took action in regard to adapting the ordinance of R. Tam in regard to dowry to the needs of the Jews of Germany. R. David of Muenzberg is mentioned as the man who was responsible for the German Takkanah requiring the husband to return to the family of his wife one half of what he received from them, if his wife died within two years after their marriage. The Takkanah of R. Tam had limited the time to one year but had enjoined the return of the whole of the dowry. Another change that R. David introduced and which was dictated by the peculiar conditions prevailing in Germany, was that the Takkanah was made to apply to the wife as well as to the husband. In Germany child marriages were quite frequent. The parents of both the husband and wife would contribute toward the sustenance of the new couple. It was now ordained that if the husband died within two years after the marriage, the wife could not

collect her dower right from the property which had been given them by the husband's family at the time of the marriage. For just as the wife's family had given her their gifts in the expectation of a long married life, similarly the husband's family had not expected him to die soon after his marriage. In both cases then, the German rabbis decided, half of the gifts were to be returned.

The gatherings of the Rhine communities had continued in all probability since the days of R. Gershom. At times the Confederation may have dwindled to the Three Communities but generally some other communities were represented. A new impulse was evidently given to these meetings by R. David who apparently followed French precedent and it seems that the meetings continued with some regularity after his day.[1]

SYNODS 1200–1223

In Part II[2] of this book there are published several texts of Takkanot of three distinct synods. The date of the first of these is unknown but it must have taken place sometimes before 1220. Its provisions may be summarized as follows:

1. a. That a man shall not eat with his wife in the days of her impurity until she undergoes the proper ceremony of purification;
   b. That one may not lend money at interest to a fellow-Jew except under an agreement to share in losses as well as in profits;
   c. That a Jew shall not cut his hair or shave his beard after the fashion of Gentiles;
   d. That one shall not permit his hair to grow unduly long.
2. That if one is summoned to Court he shall respond within three days.

[1] In a letter sent by R. Nathan b. Isaac to R. Eliezer b. Joel Ha-Levi, mention is made of several synods of which no other trace has been found (Or *Zarua* I, 652, and comp. also responsum of Rashi, RFL. 27).

[2] pp. 218–250.

3. That if there are witnesses to the effect that one Jew threatened to denounce another to Gentiles, and it is found that the intimidated Jew suffered at the hand of Gentiles, it may be assumed that the one who threatened carried out his threat and he shall therefore be held liable for all damages that have occurred to his neighbor; the amount to be determined either by the statement of witnesses or in the case of there being none, by the oath of the plaintiff.

4. That books which have been left in trust may not be seized by the community for taxes.

5. That taking a false oath regarding taxes renders one unfit to testify or take an oath in Jewish Courts.

6. That any Jew compelled to make a contribution to the king or noble shall be aided by the rest of the community in bearing his burden, provided the Jew shall not himself have brought about the undue demand.

7. That a member of a community who feels that his assessment is too high, must nevertheless pay the amount of taxes claimed, but he may then bring suit against the community for the return of what he considers the excess amount.

8. That no Jew may accept religious office at the hands of Gentile powers.

9. That no Jew may gamble.

10. That neither the President nor the Rabbi of a community may excommunicate a person except at a public gathering.

11. That no one may "close a synagogue" in protest against alleged injustice unless he has "seated the *Kahal*" thrice.

12. That no one may make a public festivity except in celebration of some religious duty.

13. That the *Hazzan* may recite the prayers of the second day of Rosh ha-Shanah and of Yom Kippur after *Yozer*, only with the consent of the community.

14. That no one shall interfere with the sessions of Jewish courts.

15. That a *Yabam* may not refuse to perform the *Halizah*. (The other regulations previously ordained by R. David of Muenzberg and his council are here inserted).

16. That a guard shall see to it that Gentiles add no water to the food prepared for a wedding feast on the Sabbath.

17. That no one shall divorce his wife without the consent of the Three Communities.

18. That no one shall villify a fellow-Jew.

19. That every member of the community shall pay his tithe for the support of communal institutions.

20. That no man shall act as *Shohet* except after examination by a Rabbi or an Expert.

A more detailed study of these ordinances will be found in the notes to their translation, but the bare summary will give the reader some comprehension of the breadth of interest of the Medieval Community and of its power over its members.

A second synod took place at Mayence in 1220.[1] This synod reordained most of the provisions of the decision of the previous synod, but omitted sections 6, 9, 12 and 24. It also introduced several new sections, among which were the following:

1. That one may not use the utensils of Gentiles for Jewish wine, or permit Gentiles to assist in the preparation of Jewish wine; that one may not eat food cooked by Gentiles; that one may not clip coins (section1);

2. That the young men escorting a bridegroom shall receive only six deniers from him, and shall not be permitted to steal chickens or anything else even in play (section 6);

3. That if in any community the amount collected for educational purposes is found to be insufficient, they shall use for this purpose any bequests left the community by philanthropic individuals, unless the bequest was left for a specific purpose (section 23).

4. That every Jew shall set aside definite times for study;

[1] RMP 1022, and below Part II, p. p. 225-250, Version M.

and that the synagogue service shall be carried on with proper decorum (section 27).

Three years later another synod was held at Speyer (1223) where the ordinances of both the previous synods were combined and reenacted.[1] They are published as Text R in Part II of this book.

The members of the three synods were with a few exceptions the same Rabbis. The best known among them were R. Eleazar b. R. Judah of Worms, the author of *Rokeah* (d. 1235); R. Eliezer b. Joel Ha-Levi (*Rabiah*) who has already been mentioned, and who like R. Eleazar of Worms was a disciple of the famous R. Eliezer of Metz; R. Simhah b. Samuel of Speyer, whose discussions are often quoted with respect in the *Or Zarua* and other early codes. R. Baruch b. Samuel of Mayence, the author of the *Sefer Ha-Hokma*, which is no longer extant, but which was highly respected and was still quoted by R. Bezallel Ashknazi in the sixteenth century, attended only the first two synods. He died in 1221, two years before the synod at Speyer took place.

The members of these synods form a distinct group in the history of German Jewry. By the year 1240 they had all passed away, leaving their positions to their children in some cases, but more often to less illustrious disciples. While we have several responsa by these German Rabbis of the middle of the thirteenth century, the only man of outstanding eminence among them was *R. Isaac b. Moses Or Zarua*. R. Isaac who appears to have spent his childhood in Bohemia, came to Germany while he was still very young and studied under the famous saint, R. Judah *He-Hasid*. After spending some time in Paris where he studied under the famous R. Judah b. Isaac Sir Leon, he returned to Germany and continued his studies under the leading scholars of the Rhine country, R. Eleazar b. Judah, R. Simhah of Speyer and R. Eliezer b. Joel (*Rabiah*). He became more deeply attached to Rabiah than to any of his other teachers and included many of his responsa in the

[1] Rosenthal, *Monatsschrift*, 45, 249 ff. and Part II, of this volume, pp. 225-250, Version R.

code which he wrote in later years and which made him famous. It is said that R. Meir b. Baruch studied under him before leaving Germany to complete his studies under the French Tosafists.

While R. Isaac is remembered even in our own time as the author of one of the most important of German codes, and while this work of his soon became recognized in all parts of Germany and France, as well as Austria and Bohemia, he seems to have taken little part in the organization of the German communities in his day. He was in all probability recognized as the foremost German scholar in the year 1250, before the rise of R. Meir b. Baruch, yet he did not seem to possess the executive ability of either a R. Tam or a R. David of Muenzberg. Be the causes whatever they were, the fact remains that R. Isaac did not succeed in calling any synod such at those that had taken place in the first quarter of the thirteenth century.

SYNOD OF 1250[1]

It was probably after R. Isaac had left the Rhine provinces and retired to the more eastern countries, that an attempt was made to gather a synod of the Rhine scholars. This synod was held at Mayence, probably about the year 1250. Among those who attended were R. David b. Shealtiel, a disciple of R. Eliezer b. Joel Ha-Levi; Meshullam the son of R. David b. Kalonymos who had attended the synod of the early part of the century; and R. Judah b. Moses Ha-Kohen, who, in company with the other two just mentioned, held a long discussion with R. Isaac Or Zarua regarding the case of a Jewish girl who had been outraged during the massacre at Frankfort in 1241, and whose betrothed on that account refused to marry her.

There is only one ordinance preserved as the decision of this synod. It is a re-enactment in stronger terms of the old provision found in the earlier Takkanot against permitting the Rabbi to excommunicate a man without the consent of the community. It was now decided that the

[1] For discussion of the date of this synod see below, p. 222.

Rabbi should have no power to declare any excommunication without the consent of the community, nor should the community have the power to excommunicate any member without the consent of the Rabbi; any excommunication issued in disregard to this ordinance was to have no validity even if the Rabbis of neighboring communities should join the local Rabbi in regard to the excommunication.

It is apparent that the question of the right of excommunication was becoming a more and more troublesome one. The weapon had been of the greatest use in the construction of the German Jewish communities, but it threatened to become a Frankenstein that would destroy them. If every Rabbi could use the right of excommunication at his will, he might use it to further his own interests. The majority of a community might tyrannize over a minority as much as it pleased. Obviously the power of excommunication was such that it could not be left to the discretion of any single individual. The attempts to limit it occupy a very interesting chapter in the later development of German Jewish life; but it must be admitted that all attempts to regulate it failed in the end, so that it continued to be used at the whim of men who were not always as scrupulous as those who had brought it into being. As it was employed with less and less care, people respected it less and less, Rabbis began to use it against one another and gradually it became meaningless and without force even in ghetto life.

Ordinances like the one just discussed limiting the power to declare excommunication against a person are to be found among the Takkanot of Italy even in much later centuries. In modern times the Russian Czarist government forbade the issuance of a *herem*; and it would be an interesting question, which has, however, fortunately never been tested, whether American courts would permit the issue of such a *herem*.

It is probable that this synod of the middle of the thirteenth century is responsible for the inclusion of the Takkanot of R. Gershom into the text of the decisions of

the Synod of 1220.[1] There is reason to believe that these Takkanot (TRG) were not originally incorporated in the ordinance but were introduced later; as we find the decision of the synod of 1250 attached to that of the synod of 1220, it seems not unreasonable to assume that the later council has added them to the body of the earlier Takkanah itself.

[1] See below p. 218.

CHAPTER VI

SYNODS 1250–1300

R. MEIR B. BARUCH

The departure of R. Isaac *Or Zarua* from the Rhine country had left Germany without any outstanding spiritual leader. There were several scholars whose names are remembered in connection with important centers, such as R. Yedidiah of Speyer and the men who had gathered at the assembly of 1250. But none of these seems to have been able to command the universal respect or indeed to have had the outstanding personality necessary to found a school about which the others might gather. It is for this reason that their names are known only to those who with diligent eye search into the faded records of the past; by the masses they have been forgotten. Not so was R. Meir b. Baruch of Rothenburg. His name was even till our own times a household word in Jewish families, the story of his life and trials became the common property of the Jewish people.

R. Meir b. Baruch was born at Worms about 1215, the son of a man well-known for his piety, scholarship and oratorical powers. He studied in Germany under R. Isaac *Or Zarua*, but soon proceeded to complete his studies in the Tosafistic school under R. Jehiel of Paris. He was in Paris when the Talmud copies that had been seized under the Papal order of 1240 were burned. His dirge composed at this time, is still recited annually on the ninth of Ab.[1]

It was soon after this that he returned to Germany to accept the rabbinate of Kostnitz. But he could not have remained there long, for he was successively Rabbi of Kostnitz, Augsburg, Wuertzburg, Rothenburg, Worms,

[1] The poem begins with the words שאלי שרופה באש.

Nuremberg and Mayence. Professor Ginzberg suggests that he is called R. Meir of Rothenburg because he stayed longer in that city than in any other. Pupils gathered to him from far and wide. Among them were R. Asher b. Yehiel, who later emigrated to Spain, where he became the rabbi of Toledo, and wrote the famous *Code of Asheri*, and R. Mordecai b. Hillel was the author of the code called *Mordecai*, which is a treasure trove for the scholarship of German Rabbis before the end of the thirteenth century; and R. Meir Ha-Kohen, the author of the *Hagahot Maimoni* in which the opinions of the French and German scholars are given as notes to the *Yad* of R. Moses Maimonides.

R. Meir himself wrote commentaries on the sixth order of the *Mishnah*, *Tosafot* to many treatises of the Talmud, (of which those on *Yoma* are printed as the ordinary *Tosafot*), and several codes. But his most important work was the writing of his responsa which have been printed in four collections differing from each other, although many of the individual decisions are duplicated. Many of his answers are also found in the codes of his disciples. He was often called upon as court of the last appeal to decide differences between communities and especially between communities and their members.

We might suppose *a priori* that a man of the type of R. Meir would take some action towards bringing the communities in closer touch with one another and such is indeed the fact. By comparison of several sources it can be shown that R. Meir brought about the convening of at least one council—during his stay at Nuremberg—and perhaps this was only one of several.[1]

R. Hayyim *Or Zarua*, the son of R. Isaac, who has been mentioned, was a pupil of R. Meir b. Baruch's. He writes in one of his responsa, that "when the number of women who deserted their husbands increased, R. Meir wrote to R. Yedidiah, who was at the time in Speyer, and to the *chain of communities* to gather and ordain that a wife deserting her husband should lose her rights, not merely to the *Ketubah* but also should forfeit whatever property

[1] Bruell, *Jahrbuecher*, 8.61, and references there given.

she brought to her husband."[1] This is the only synod convoked under R. Meir of which we know but it reflects a serious condition that must have arisen at the time.

The law of the Intractable Wife is one of the most complicated in Jewish marriage law, and one that seems to have undergone more changes than any other. Without going into all the detailed changes that took place in this law in the times of the Amoraim and the Geonim, it will suffice to say here that in his younger days R. Meir held that if a woman refuses to continue to live with her husband and fails to offer a reasonable objection to him, she should be divorced and should forfeit her right to the *Ketubah*. She should, however, receive whatever property she brought with her. This view accorded with that of Alfasi and apparently gained widespread recognition in Germany.

But this rule was not very well suited to the economic conditions of the German Jews. A large number of the German Jewish women partook in the economic life of the country. It was not unusual for a wife to support her scholarly husband while he devoted himself to his studies. If she had no property of her own she would imitate the wife of the great R. Akiba and toil in order to support the family, while her husband was making headway as a student of the Torah. It is related as an instance of the extreme piety of Maharil (R. Jacob Molin) that he refused to accept anything from his wife but preferred to earn his own living as a marriage broker.[2] As scholars rarely if ever, received any stipend from their communities, they could continue their studies only if they were rich in their own right like R. Meir b. Baruch, married rich women, or were supported by their wives. Under such conditions it was likely that the number of women who would express dissatisfaction with their husbands would increase.

The situation was doubtless one which called for action. The responsum of R. Hayyim gives only a hazy idea of the Takkanah. Indeed he declares that he does not know

[1] Res. R. Hayyim *Or Zarua*, 69, 126., 191.

[2] *Maharil*, Laws of *Hanukkah*.

whether or not the Takkanah was generally accepted. In another responsum on the subject, R. Hayyim does not even mention the Takkanah.[1] It is, however, mentioned in *Hagahot Asheri*, thus: "R. Meir ordained toward the end of his life that even the property which a wife brought to her husband is forfeit" if she proves intractable.[2] Fortunately, we have a responsum of R. Meir himself in which he refers to this ordinance. He says: "The Communities ordained when they were at Nuremberg that in any such case where a woman leaves her husband *because of the persuasion of relatives* the husband shall retain all her property, and he shall divorce her even against her will, if she fails to return to him after being warned to do so by the Court. It is proper that all Israel should obey this Takkanah.....and moreover it is even Talmudic law, for since there is no apprehension that she will be driven from the Jewish fold since there is no Gentile involved, the law ought to be placed on its Biblical plane that all that a woman owns is the property of her husband".[3]

It is clear from this statement that the Takkanah applied primarily only to women who were induced to leave their husbands because of quarrels generated by their families. It is apparent from the fact that we know this provision only from a passing reference in *Hagahot Maimoni*, that the synod adopted a Takkanah of many provisions, and that with our present meagre information it is quite unsafe to attempt to reconstruct it. It is enough to know that it dealt with the problem of the "intractable wife" and that the laws in regard to her were made much more stringent than they had been.

R. PEREZ B. ELIJAH OF CORBEIL

While German Jewry was thus attempting to keep alive its system of synods, these had fallen into disuse in France. In the century following the death of R. Tam we hear of no synod. The thirteenth century was a disastrous one

[1] Res R. Hayyim *Or Zarua* 191.
[2] *Hagahot Asheri, Kiddushin* 3.16.
[3] *Hagahot Maimoni, Ishut* 14.30

for French Jewry. New laws were constantly being made against them and new decrees issued. They became the possessions of the kings and of the barons and were reduced to the status of serfs. The burning of the books of the Talmud in Paris about the middle of the century was the outstanding event in Jewish life of the period, but it was only typical of the troubles that the Jewish community had to undergo. The school of R. Judah Sir Leon at Paris attracted many pupils and its reputation was even increased under the leadership of R. Jehiel b. Joseph, who has been mentioned above as one of the masters of R. Meir b. Baruch. Other pupils of the academy of R. Jehiel were R. Isaac of Corbeil, the son-in-law of R. Jehiel and the author of the *Semak* (*Sefer Miẓ·ot Qatan*); and R. Perez b. Elijah, the author of additions to the *Semak*, a code of his own and Tosafot on several tracts of the Talmud, some of which are printed in the ordinary editions as *the* Tosafot. But after the middle of the century the period of decadence began.

It is probable that political conditions made the convening of a French synod at this time very difficult. For we find R. Perez attempting to establish a Takkanah by correspondence with the contemporary Rabbis.[1] This proposed Takkanah dealt with the subject of wife-beating. This crime was one that rarely, if ever, gave trouble to Jews of the Middle Ages. There are on record cases of maltreatment of wives by their husbands that came before R. Simhah b. Samuel and R. Meir b. Baruch. Both of them reprimand the husband severely, insisting that the community should treat those who strike their wives more stringently than those who commit assault on others. There may have been some temporary cause that moved R. Perez to urge the adoption of the Takkanah that in the case of a husband guilty of beating his wife, the wife should be entitled to alimony, from her husband's property "as though he were in a distant land". In other words, R. Perez wanted to introduce into Jewish law the priniciple

[1] Guedemann I, p. 263. See also Part II, p. 216.

of separation without divorce; since the husband would not treat his wife properly, she would be freed from her duty of living with him, yet he would be compelled to support her. We never hear of the Takkanah elsewhere, and it probably failed to gain the support of R. Perez's colleagues because the rarity of the offense made the revolutionary measure seem unnecessary.

CHAPTER VII

LATER GERMAN SYNODS

GERMAN SYNODS IN THE FOURTEENTH CENTURY

R. Perez died before the close of the thirteenth century and was thus spared the pain of seeing the expulsion of his comrades from the land in which they had built up the great academies. The blow fell in 1306, when the Jews of France were ordered by Philip the Fair to leave the country. Many of them wandered to Germany, where the Emperor demanded 30,000 marks for permitting them to settle in his domains. As the French Jews had been robbed of all their property by their former sovereign this money had to be raised by the German Jews. A synod was called at Mayence to raise the means of satisfying the demand.[1]

Probably somewhat later than this synod was that which convened at the instance of R. Hayyim *Or Zarua* and which regulated the practice of answering questions regarding civil law by letter.

Jewish tradition had always opposed the employment of counsellors in litigations. Every man was expected to act as his own lawyer. So much depends upon the claim which a person makes in a Jewish trial, that it is very important that no litigant shall receive expert advice in making a response. The influence of the environment, however, was constantly tending to bring about the introduction of a legal profession among Jews. Already in Talmudic times a Rabbinic maxim warns the Rabbi not to help a litigant in arranging his claims. R. Hayyim and his colleagues ordained that no Rabbi was to give a decision in any case unless it is referred to him by both litigants. "If a man comes to the Rabbi and says to him, hear my

[1] *Bruell, Jahrbuecher* 8.61.

claims and decide on the basis of them, and if the Rabbi yields to his request to him, that Rabbi is no longer to act as a judge".[1] We do not hear of this Takkanah elsewhere but we do hear of many rabbis who refuses to answer questions addressed to them by one of two litigants. R. Israel Isserlein objects to the practice;[2] R Obadiah Sforno[3] declares it to be a practice condemned to the ancients.

For a century after R. Hayyim history is silent on synodal activity, yet that century was replete with important events. Of these, the most outstanding was the Black Death which swept over Europe during the years 1348-1351. Not only did the Jews suffer by the plague which carried off young and old, but frenzied by the fear of the pestilence, the Gentile population rose against the Jews accusing them of having brought on the epidemic. This belief was further encouraged by the myth, which gained circulation but which appears to have been without foundation, that the Jews suffered less from the Black Death than their Gentile neighbors. The outbreaks began in Spain but soon spread throughout Western Europe. The Jews in Germany suffered, however, more than any other group. There were riots in Augsburg and Munich in November 1348, and thence the flames spread to the set of Bavaria and the Rhine country. The Jews of Speyer were the first of those of the Three Communities to suffer. But the number of their slain was small in comparison with the two thousand Jews of Strassburg who were killed in February 1349. It were but horrifying once more to tell the tale of the rapine and cruelty that was displayed in Germany during those terrible years. The Jewish communities, weakened by the plague, impoverished by the death of the debtors who owed them money, were all but destroyed by the hand of the maddened multitude, who found in Israel a scapegoat on which to wreak their anger.

[1] Res. R. Moses Isserles 57.

[2] Isserlein *Pesakim*, 175, Comp. Res. R. Isaac b. Sheshet, 5.

[3] Res. R. Menahem Azariah 89; Comp. RFL 28; and Takkanot of Italy, part II, p. 301.

To such an extent were the communal activities paralyzed that no attempt was made to call a synod after the horrors were over. While the Crusades had meant severe losses for the Jewish communities they could still rally sufficiently to gather and take counsel; the suffering through which they passed in the fateful year, 1349, left them without even that strength. It was thirty years before the newer generation had sufficiently rested from the turmoil and troubles of the Black Death and its persecutions to call a synod to deal with some of its problems.

SYNOD OF 1381.

The synod was held at Mayence in the middle of the month of Ab, 5141 (July 1381). The most prominent of its members was R. Moses b. Yekutiel, the Rabbi of Mayence, who was the father of the even more prominent, R. Jacob Molin. Others who attended the council were R. Samuel Bonfant, an ancestor of the famous Salman of St. Goar;[1] and R. Abraham b. Gamaliel b. Pdahzur who is elsewhere mentioned as a colleague of R. Moses Molin.

This council discussed the old problem of the *Halizah*[2] We have seen how R. David of Muenzberg tried to cope with the abuses arising from this law. The ordinance enacted under his direction had now been in force for almost two hundred years, but apparently it was no longer adequate. At any rate it seems that brothers-in-law were no longer satisfied with the ancient arrangement and insisted on obtaining more than what was their due under the Takkanah of 1196. Yet the matter could not be left to the adjudication of each local rabbi, as that resulted in disorder and unfairness. The synod therefore decided that all the property of the couple, both that given them by the family of the husband and that given them by the family of the wife, should be divided equally between the brothers-

[1] The writer of *Minhage Maharil* whom Dr. Schechter so aptly called a Jewish Boswell. At the end of the Ms. of *Maharil* in the library of the Jewish Theological Seminary R. Salman gives his own genealogy and Samuel Bonfant is mentioned among his ancestors.

[2] For text etc. see Part II, p. 252.

in-law and the widow. Only property inherited after the marriage was exempted from this division. Such property as the husband had inherited from his family was to be given to his brother, and what the wife had inherited from her family, she was permitted to retain.

The Council also undertook to define in terms of current money the value of the *Ketubah*. As is well known, the wife was granted by the marriage contract two hundred *zuz* if she was a virgin and a hundred *zuz* if she was a widow. This obligation of the husband toward his wife is considered by some Rabbis to be even Biblical,[1] but is at any rate held to be a very old custom. The debt is collectible on the death of the husband or in case of divorce. It is forfeited by faithlessness on the part of the wife and also in a few other cases. The wife may not, however, cancel or forego her rights in this respect. No husband may continue to live with a wife unless he is bound by the *Ketubah* to pay her the sum specified from his estate. He may at the time of the marriage add to it, and then he becomes obligated for the "additional *Ketubah*". He may not detract.

Just how much a mina (one hundred *zuz*) meant became a matter of serious importance as soon as the Jews began to wander over the face of the earth. Not only was the relative value of money different in different times and places, but it was difficult to ascertain the absolute weight of the silver in the mina of Talmudic days. There is no need to enter here into the endless calculations of the codifiers but we learn from our Takkanah that in Germany the sum had been fixed in terms of the currency of Cologne. This had been the most marketable in earlier times and had approached most nearly a standard coinage. By the time of the Council, the coinage of Cologne had ceased, however, to be so reliable. The florin now replaced it, and the value of the *Ketubah* had to be re-assessed. It was now placed at three hundred and six hundred florins for the widow and the virgin respectively.

The Takkanah was accepted by most of the Rhine

[1] *Ketubot* 10a.

cities but not by Cologne where apparently the old standards continued in force. Strangely enough, *Maharil*, who was the son of one of the members of the synod, fails to make any mention of the council in discussing the difference of custom between Cologne and the other cities.[1]

Graetz[2] reports several synods of this period. A council took place at Weissenfels in 1386 but we know nothing of the circumstances under which it gathered or of its decisions. It is reported that the delegates to the council took the precaution to obtain letters of protection from prominent nobles but that these helped them little in their sufferings on the journey.

We have somewhat more definite information about a synod held about the year 1400 at Erfurt.[3] Among those present were R. Eichel, R. Lippman (perhaps he of Muehlhausen),[4] R. Nathan, R. Hezekiah, and R. Abraham Cohen. The only decision recorded is that forbidding the priests to pass through the gates of the city and the cemetery at funerals until the dead had been carried through those gates.

SYNODS OF THE FIFTEENTH CENTURY

R. Jacob Weil, a disciple of Maharil, tells of another synod, this time held at Nuremberg, at which "many ordinances were passed."[5] One of them was to the effect that "if one of the litigants wants to use German in pleading his case, the other must do likewise." This ordinance is in the spirit of Talmudic law which requires that so far as possible the two litigants shall be placed in the same position before the judges. Moreover, since in Jewish court-actions, the discussion was almost oral, it was very important that the litigants should understand each other.

[1] Compare *Minhage Maharil*, laws of *Nissuin*.
[2] Vol. 8–2, p. 426.
[4] *Pesakim*, 24.
[3] Famous as the author of the polemical work, *Sefer Nizahon*.
[5] Graetz Gesch. 8–2, p. 427ff. Res. R. Jacob Weil. 101.

It would not be difficult for a litigant using Hebrew to disguise his claims from one who knew only German.

Less important from our point of view, but of no less seriousness to the people of the age, was the decree of R. Lippman of Muehlhausen which must have been issued about this time, against using horns other than those of rams for the *Shophar* of *Rosh Ha-Shanah*.[1] This was not really the decision of a synod at all but was hailed as a Takkanah since it was the official decision of R. Lippman and his court at Erfurt.

About the middle of the fifteenth century, German Jewry suddenly found itself torn into two parts by a violent conflict that broke out among the Rabbis as a result of the attempt of R. Seligmann Oppenheim of Bingen to set himself up as a superior Rabbi, if not a Chief Rabbi. He called a council of all the communities, but refused to give any statement of the agenda of the meeting. We do not know all the decisions taken at the meeting, but one of them made R. Seligmann the final arbiter in the interpretation of the Takkanot. This authorization was quite revolutionary and aroused the protests of R. Moses Mintz and R. Phoebus, as well as of other representatives of communities which had been represented at the Bingen conferences. Appeal was made to R. Israel Isserlein of Neustadt, near Vienna, who decided against R. Seligmann. After a long discussion, R. Seligmann was forced to yield and this effort at centralizing German Jewry proved unsuccessful.[2]

In 1415, occurred the wellknown Blood Accusation against the Jews as a result of the disappearance of the boy, Simon of Trent. The confessions extorted from the Jews under torture impressed the Gentiles, so that in the following year many Jews in Regensburg were seized in a blood-accusation. In order to counteract the activities of the citizens of Regensburg who sought to bribe the then

[1] The Takkanah is found in קובץ דברים נחמדים printed in Husiatyn.

[2] Graetz 8-2, p. 428ff., Res. R. Moses Mintz, 63, and other references given by Graetz.

Emperor Frederick III to give them the right to try the accused Jews, large sums were needed. A council was held at Nuremberg which did not, however, dare of its own accord levy a tax on the Jews of Germany, and so appealed to R. Joseph Colon (Northern Italy) [1] to issue the demand for them.

SYNODS OF THE SIXTEENTH CENTURY

It is clear that the holding of synods in Germany was becoming more and more perilous. A council held in 1493 aroused the suspicions of the Gentiles against the Jews. [2] We know nothing however of its decisions. The councils of the sixteenth century of which we have any records are very few. We hear of one in 1562, and another in 1582, at Frankfort-on-the-Main, but these were more concerned with the material than the spiritual welfare of the people. [3] Their discussions no longer centered about Jewish law, but about Jewish disabilities and sufferings. As we read these dark pages in German Jewish history a feeling of futility comes over us, as when one witnesses the death pangs of a great soul. It is difficult to feel in the activities of the fifteenth and sixteenth centuries, in the quarrels about R. Seligmann and the ordinances about priests and trumpets the spirit that had filled the synods of R. Gershom and R. Tam. The living Judaism of the first days of the revival was yielding before the ceaseless persecutions, the merciless tyranny of the evil days that had come. Just as the great codes of R. Eliezer b. Nathan, Rabiah, R. Isaac Or Zarua, and R. Mordecai b. Hillel were being replaced by the collections of customs of the type of R. Abraham Klausner's *Minhagim*, the *Minhage Maharil*, and the *Leket Yosher*, even so were the general Rabbinic discussions descending from their lofty level to matters of trivial importance.

[1] Bruell, *Jahrbuecher*, 8.61.

[2] Bruell. *ibid.*

[3] *Monatsblaetter*, 1890, p. 155.

SYNOD OF 1603

Our[1] account of the German synods must close, however, with an attempt to regain the old prestige by a council that was held in Frankfort in the year 1603. This synod is of particular importance as it led to a long trial of the Jews of Germany as having been guilty of high treason. In order to meet the accusations of the Jew-baiters, three German translations of the Takkanot of this synod were prepared. The accusations brought no untoward results, but while they were being discussed the Jews of Frankfort and indeed of all Germany lived through years of profound anxiety. Yet there is nothing in the Takkanot that can in any way be said to have justified the slightest suspicion against the Jews. There are provisions against appealing to the secular courts for redress; regulations concerning the just distribution of communal taxes; exhortations to the spiritual heads of the communities to see to it that the *Shohetim* of their respective communities are duly qualified; ordinances against buying wine from Gentiles, forbidding intermarriage with such Jews as are in the habit of buying wine from Gentiles, and deposing any Rabbi found guilty of such practice or permitting others to follow it; regulations regarding the ordination of Rabbis, forbidding the granting of authorization except by a committee of three heads of academies, or to a young man before he has been married for two years; refusing recognition to the appointment of a person as *Haber* (scholar) by any authority outside of Germany; denunciation of the practice of dealing in counterfeit coins and collecting debts by means of forged notes; an ordinance against receiving stolen property; a provision denouncing the practice of borrowing money or wares from Gentiles and failing to pay, and providing that one guilty of such practice is neither to be helped nor defended by his fellow-Jews against prosecution by the authorities; a prohibition against performing any marriage

[1] Ibid. See also Horovitz, *Die Frankfurter Rabbiner-versamlung*, where the Hebrew text has been published. See also below Part II. p. 257 ff.

ceremony for one who transgresses these ordinances or intermarrying with them; a prohibition against buying milk from Gentiles; a prohibition against wearing clothes like those of the Gentiles or against forbidden mixtures of linen and wool or exacting usury; a prohibition against printing any book without the permission of three recognized rabbis; and a further prohibition against buying books printed without permission; an ordinance that no Rabbi shall seek to extend his sphere of authority over people previously under the jurisdiction of a colleagues; a provision denying the power of any Rabbi outside of Germany to pronounce a *herem* over the German communities and declaring any *herem* pronounced by a foreign Rabbi void; a section exhorting every community to pay the share of the tax allotted to it by the conference, and forbidding any marriage with such as would refuse to accept the ordinance, and annulling such marriages if performed.

These Takkanot strongly recall of the authority of the early German Rabbis. The boldness which characterizes some of the provisions, the attempt to deal with real abuses, the fearlessness with which such iniquities as the counterfeiting of coins and the forging of notes is denounced, the assumption of the authority to annul marriages contracted in violation of the ordinances, indeed, the very thought of using the power to forbid marriage with such as failed to obey the ordinances, were worthy of the most promising days of German Jewry. But it was the last flicker before extinction. The authority that had once been possessed by Jewish synods had passed away from them. Obedience which people refused to give willingly could hardly be extorted by any means. Unless the vast majority of the Jews would accept the Takkanot, their very rigour was certain to make them only the more futile. The days when Jews would have agreed to marry only such as were observant of Rabbinic Takkanot were forever gone. Perhaps such an ordinance could never have been enforced. At any rate, it does not seem to have suceeded in unifying the Jewry of seventeenth century Germany. The decay that had begun with the Black

Death, and the persecutions that accompanied it in the middle of the fourteenth century, had touched vital nerve centers of German Jewry and there was no longer either the early devotion to the Torah or the power of organization. Just as the reading of the annals of the growth of the German communities in the eleventh, twelfth and thirteenth centuries fills one with hope and inspiration, even so a study of the decay that marked the progress of the later centuries fills one with gloom. The very revivals that took place under the guidance of Maharil in the West and Isserlein in Austria, were revivals which held in themselves seeds of progressive disintegration. The times required not merely a saint or ordinary scholar, they required a R. Gershom or a R. Tam, combining unequalled scholarship and a strong personality with practical foresight and power of organization. Such a physician did not arise and so the disease spread further and further.

It is time that we turn to the developments that were taking place during these later centuries in southern Europe where Jewish communal life was beginning to show signs of life and power reminiscent of the early days of France and Germany.

CHAPTER VIII

TAKKANOT OF CANDIA

The persecutions of the Crusades and the resultant lowering of the social status of French and German Jewry coupled with the increased knowledge of the Orient that was brought to Europe through the returning knights, aroused in the thirteenth century a new interest in Palestine in the hearts of the Jews of Western Europe. As early as the beginning of the century R. Samson of Sens, accompanied by about three hundred French and English rabbis, attempted the hazardous migration to the Holy Land. Some twenty years later we find a R. Baruch b. Isaac, probably the well-known author of the *Sefer Ha-Terumah*, on his way to the Land of Israel. After the middle of the century we hear of the migration of the two great polemists on behalf of the Jewish faith—R. Yehiel of Paris and R. Moses b. Nahman. In the year 1286, R. Meir b. Baruch set out for Palestine, but was captured on the way and imprisoned.

While the journeys of but these few outstanding persons have been recorded in history we may be certain that a larger number of rabbis and laymen undertook the journey to the Orient. Many of them, however, did not attain their goal, but remained in the countries through which they passed. A number of others forced to flee from tyranny and persecution sought homes in the southern European lands. We thus find that beginning with the close of the thirteenth century and continuing through the fourteenth century, there is an influx into the southern European lands of scholars of German and French extraction. Thus R. Asher b. Yehiel became the rabbi of Toledo. Thus also there grew up in northern Italy the families of the Landaus, the Mintzes, the Katzenellenbogens, whose very names betray their German origin.

While there had been no important synods in Spain or Italy in the centuries in which they were attaining such importance in the Jewish life of France and Germany, it was clear that the arrival of the northern Rabbis would of itself stimulate the establishment on the new soil of the institution which proved so useful in their former homes. The earliest recorded synod which was inspired by one of these migratory rabbis was that held on the island of Crete in 1238.[1]

The Jewish population of this island was small, but their laxity in certain observances and particularly the loose morals of some of the younger elements of the community shocked the more or less Puritanical German scholars. In German cities there was hardly a Jew who did not attend daily service; here there were large numbers who did not come to the Sabbath service till they had refreshed themselves by a ramble along the beach. The Jews of the German towns were knit together by centuries of traditions and by the common fear of persecution. They were almost like members of the same family. If a death occurred, it was a matter of concern for the whole community, and the Talmudic precept that no work should be done during a funeral was rigidly carried out. How could one accustomed to such expression of mutual sympathy on the part of townspeople, regard members of a community who left a bereaved family to grieve by itself.[1] The German rigorists had surrounded the Sabbath with any number of restrictions. Not satisfied with the prohibition of work on that day, they had added severities of their own. It was inconceivable that any member of a German community would continue to work on Friday till nightfall, exposing himself to the possibility of the violation of the Sabbath. Yet this was a common practice among the Jews of Crete. Finally there were numbers of cases of indiscretion on the part of betrothed couples, an evil which was almost unknown among the Jews of France and Germany not only

[1] See *Hoffmann Festschrift*, p. 268, but compare *Kaftor Va-Ferah* p. 792.

because of their more rigorous adherence to Jewish ceremonial, but because of the frequency of child-marriages.

It was R. Baruch b. Isaac, when he passed through Crete on his way to Palestine in 1238, who called the attention of the community to their waywardness and insisted on reform. With his aid a series of ten ordinances were drawn up and established.[1] The main provisions were directed against the abuses already mentioned. But the German origin of these ordinances is betrayed in the re-establishment in this island of the Takkanah of R. Gershom against renting from a Gentile a house from which a former Jewish tenant had been unjustly evicted. Another ordinance prohibits defrauding Gentiles, a third forbids anyone to compel a fellow-Jew to attend the secular court on Friday.

R. Baruch b. Isaac established these ordinances in a council attended by fifteen prominent Jews of Crete. Yet it was not to be expected that the mere passage of the Takkanot would give them permanence, so that we are perhaps justified in assuming that within a few years they fell into oblivion. It was a Cretan rabbi—R. Zedaka—a person otherwise unrecorded in the annals of Jewish life, who re-established these ordinances. He must have felt that this failure to acquire the authority due them was the result in part of their being written in the rhymed prose form that was so delightful to the French and German rabbis. Being acquainted with philosophy, he prefaced the more important ordinances with ethical discussions of their value. Thus in repeating the ordinance against working at the time of a funeral, he takes the opportunity of giving a discourse on immortality, and in connection with the ordinance urging the people to attend the service in the synagogue, he gives an exposition of the value and meaning of prayer. In discussing the relations of betrothed couples, reference is made to a case where pre-marital relations led to infanticide, and the prohibition established by R. Baruch against a betrothed man entering the house of his future

[1] These Takkanot are reprinted in Part II, of this volume, p. 265 ff. from the text of Rosenberg, in *Hoffmann Festschrift*, p. 270 ff.

bride except in matters of the utmost importance and in the company of two other men is repeated.

Our scant records of the development of the Cretan Jewish community give us no information of the further history of these ordinances or their effectiveness. Before turning to the discussion of the ordinances of the other southern European lands, it must be noted, however, that the same prominence which the suppression of illicit sex-relationships is given in these ordinances, is given it in those of Corfu, of Italy and of Spain. While the institutions of the synods was imported from Germany the conditions that these synods had to face in the new lands were quite different from those that prevailed in the more learned communities of Germany and France.

CHAPTER IX

TAKKANOT OF ITALY

In Italy, as in Candia, the spirit of the Torah received new life from immigrants from Germany. It was the many German rabbis who settled in the northern part of the peninsula in the fourteenth and fifteenth century who rekindled the light of Jewish learning in those communities. It was natural therefore that they should bring with them some of the outstanding institutions of the Jews of the Rhine country. In a country whose religious life was more or less dominated for a century by scions of the foremost German-Jewish families, we would naturally look for synods and inter-communal Takkanot. And in truth while we hear of no attempt in earlier times at federating the Italian communities, the beginning of the fifteenth century did see such an endeavor carried out.

It required the imminence of a serious danger to bring together representatives of various Italian communities in 1416. Those were the days of the rival popes, Benedict XV and Martin V. Benedict had in his anger against the Jews released a bull which was fraught with the most threatening danger to the Jewish people. Not only was the study of the Talmud forbidden and all Talmud copies ordered seized and destroyed, but Jews were forbidden to do business with Gentiles, and were compelled to attend church services thrice a year to hear their religion blasphemed. It was with the hope of being able to influence the ultimately victorious pope to be more favorable to Israel that the communities of Rome, Padua, Ferrara, and Bologna as well as the districts of the Romagna and Tuscana, sent delegates to a council held at Bologna. We do not have the complete minutes of the meeting or the resolutions decided upon. It is known, however, that a "Vigilance Comittee" was appointed on which each

community was represented by two men. This Committee was to have the power to levy taxes, and to expend the funds raised in gifts as might become necessary for the common defense. Arrangments were made for an equitable distribution of the taxes, and a general treasurer was appointed.

We know of these provisions only in so far as they are quoted in the decisions taken at the meeting of this Vigilance Committee in 1418.[1] By that time Pope Martin V had been definitely recognized by all as the head of the Church. It was therefore necessary for the Commission to meet and take action toward gaining his favor for the Jewish community. The meeting was held at Forli, on May 25, 1418. A deputation was to be sent to the Pope as soon as possible, to ask for the restoration of the ancient privileges of the Jews and "as is understood by all who think" a lavish gift was authorized in order to pave the way for this restoration. The Jews knew only too well that the heart of the Mediaeval men of power "hung on their purses". Detailed arrangments were made for the collection of the tax, which was to be divided in two parts. One part was to be collected according to the wealth of the families. This tax was a ducat and a half per thousand ducats of property in the possession of the family. A further tax which was rather in the nature of a poll tax, was assessed against each family. Each family possessing more than five hundred ducats was to pay a ducat and a half, a family possessing less than five hundred ducats and more than one hundred ducats was to pay a ducat if they could, but in any case not less than half a ducat. Recipients of charity were of course freed from the tax, but there were no other exemptions. The Communities were urged to use both the spiritual power of the *herem* and the physical force of the state in the collection of the taxes.

The council did not, however, limit itself merely to fiscal arrangements for the Communities. It dealt with internal Jewish conditions as well. Strict rules were laid down regarding extravagant dressing and lavish banqueting.

[1] See Part II, p. 282 ff., and *Graetz Festschruft* p. 53 ff.

Playing games of chance was forbidden, except, curiously enough, on fastdays. This exception is in striking contrast to the German ordinance which permits playing only on festive days.[1] The kind of clothing that might be worn was described in detail. The husbands were made responsible for the observance of this ordinance by their wives. If one's wife wore too costly a dress, one was subject to a fine. Failure to pay a fine made one liable to lose the privilege of being called to the Torah or being counted as a member of a *minyan*.

Limitations were placed on the right to assemble. No more than six persons were permitted to gather in any place outside the synagogue except to discuss matters of religion. Even promenading about the streets was prohibited except on festival days. In general, any action that might arouse the notice, the envy or the anger of the Gentile population was deprecated.

The self-abasement reflected in this document is hardly to be paralleled. While the protest against luxuries may have been justified and at least finds its outerpart in most of the writings of the period in all countries,[2] both among Jews and Gentiles, the fear of walking about the streets, the apprehension that Gentiles might suspect Jewish gatherings is almost without parallel. Nor was any attempt made at self-deception regarding the reasons for these prohibitions. They were made so as to avoid giving offense to non-Jews and that fact is distinctly stated. It is the low social position held by the Jews of Italy that is reflected in these ordinances, and the self-contempt that grew out of it made them necessary.

While this influence of the Gentiles on the Jews was vicious there was another influence even more vicious. In the Takkanot of Candia we heard of precautions taken against misconduct by engaged couples,[3] but we have thus far not heard of any ordinances regarding vice. It appears, however, that that was a matter calling for serious considera-

[1] See part II, p. 242.
[2] See Part II, p. 244, and p. 374.
[3] See Part II, p. 279.

tion among the Italian Jews. Respect for woman had lamentably broken down and vigorous action seemed necessary to maintain the moral integrity of Jewish manhood and the purity of Jewish family life. The local officers of each community were charged with the duty of making investigations into this matter and to punish anyone guilty of wrongdoing. If the leaders of any community failed to take action, the leaders of the neighboring communities might interfere and discharge their duty. The officers of the Confederation pledged themselves to cooperate with the local officers in eradicating this evil. Obviously, among those guilty of the sin might be the more influential of the population, and the pledges and precautions taken against them were not too many.

While the action taken regarding the internal life of the Jews was very important, that was not, of course, the main purpose of the commission. It had been created to gain the favor of the Pope for the Jews. Its success or its failure would be measured by the success or the failure of the deputation.

There seems to have been no serious difficulty in raising the funds necessary for the work of the commission. The deputation was eminently successful in carrying out all that had been expected from it. On January 31, 1419[1] the Pope issued a bull,[1] prohibiting attacks on Jewish synagogues, or interference with the observance of Jewish religious rites, or physical compulsion to accept baptism. A second bull followed in February, 1422,[2] admonishing the Dominican fathers against inciting mobs against the Jews. The Jews had every reason to congratulate themselves on their powerful friend. It is true that his friendship was not constant, but to the down-trodden Jew of the Middle Ages, it was a blessing to find a man whose friendship could be relied upon to any extent.

In 1425 signs began to appear that the Jews had congratulated themselves too early. In one bull the Pope reminded the Jews that they were obliged to wear the

[1] Stern, *Stellung der Paepste*, p. 25, no. 11.

[2] *Ibid.* p. 30, no. 21.

badge. In another he gave the Bishop of Gerace full authority to deal as he might see fit with such Jews as failed to wear the badge or publicly accepted usury, or in general disobey the commands of the Church.[1] Finally in 1427, the Minorites complained to the Pope that the seizure of their chapel on Mount Zion by the Mohammedans had been instigated by the Jews. As the Venetian Jews had commercial connections with the Orient the Pope held that they were responsible for the infringement of the Christian rights there, and he compelled them to pay a fine because of the seizure of the chapel.

This was certainly a pass where the Commission was bound to interfere. Accordingly a meeting was held at Florence in 1428. The term of the original Commissioners had expired in 1426, and it is not known whether they met without legal sanction or their terms had been extended. They held a synod which decided to send to all the communities a circular letter begging for help in the emergency. A copy of this letter has come down to us. It is written in a very guarded tone, but is piteous in its appeal. A particular appeal is made to the communities of Romagna and Lombardy. The matter must have been particularly urgent for they write, "we know definitely neither from conjecture nor by rumor, that unless we hasten to stand in the breach against those who seek to do us ill, there is no longer any hope for us."

The appeal seems to have met a ready response, for we soon hear that the Pope became much more favorable to the Jews. In 1429 he issued a bull condemning severely the action of the monks and others who incited Christians against Jews. He repeated his order against compulsory baptism, freed Jews from certain tax-burdens, and granted them the right of free trade with Gentiles and the right of attending schools.

Just as in 1418, so now the Commission did not content itself with merely raising funds and buying the favor of princes. It looked into the internal affairs of the Jewish Community and passed important resolutions regarding

[1] *Ibid.* p. 37, no. 281

them. Of these only one has come down to us, dealing with the matter of usury. We have seen that in view of the extreme stringency of the Jewish law against usury, forbidding the acceptance of any interest whatever, the Rabbis of the Middle Ages permitted the use of certain legal fictions in order to enable Jews to borrow money from their fellows. The Rabbis were, however, very anxious that no one should accept any interest from another Jew except by means of the properly established formula. It appears to have become customary in Italy for the creditor to compel the debtor to execute a note for a larger amount than what he had actually received, in this way making the interest part of the debt. The Takkanah declares that in any such case the debtor need pay only the amount actually loaned. Furthermore, the debtor who claimed that the amount set down in the note was larger than that which he received, might compel the creditor to state under oath whether he had lent the total amount, and had not included the interest as part of the debt. If the creditor refused to take the oath the debtor was freed from paying any more than the amount which he admitted having received.

Another form of evasion of the law against usury was to use a Gentile as intermediary. Since the Jewish law of usury applied only to Jews, it was customary in Italy, as in Germany, for the creditor Jew nominally to lend the money to a Gentile and then have the Gentile lend the same money to the debtor Jew. In such cases it was usual for the debtor Jew to give pledges for his debt to the Gentile intermediary who promptly transferred them to the creditor. Ordinarily, this method secured the lender both his capital and interest without any difficulty. The ordinance prohibited such methods, and furthermore declared that if any one gave a pledge to another Jew with a Gentile as intermediary in the manner described, and if the pledge were worth more than three florins, that debtor would be compelled to pay the interest charges on his debt—not to the creditor, but rather to the Charity Fund of the Community. Furthermore, he would be fined two ducats

for each transgression, which fine too should be paid to the Charity Fund.

Whether the Commission was able to influence Jewish internal life to any large extent is doubtful. However, their success in dealing with the Pope should have raised their prestige in the community. So important did the Jews consider the Bull of 1429 that many years later the Roman Jewish community had the bull printed at its own expense. It is possible that the confederation was continued for some years. The kindness of Eugene IV and his successor, Nicholas V, must have been obtained by lavish gifts from the communities, but we hear nothing of the manner in which the sums were raised and have no way of knowing whether they were raised through such a commission as worked between 1416 and 1429 or otherwise. As so often in Jewish history, we catch a glimpse of a most interesting phenomenon which only arouses our curiosity to know more about it, but the sources fail us. It is probable that the Commission decreased in importance even if it continued in existence, and when we look about at the time of the next Takkanah, the old Commission and the Confederation which it governed have passed into history.

THE SYNOD OF 1554

For more than a century we hear of no Italian synods. But the number of immigrant Jews from Germany continued to increase and if they did not form a majority of the Jewish population by the middle of the sixteenth century, they at least set the cultural tone of the communities.

The conditions of the Jews in Italy had become markedly worse. While the Popes of the period were not unfriendly to the Jews, the feeling of the people generally had grown more hostile. The printing of Hebrew books had begun, and the Inquisition was already busily engaged in assigning them to the fire. These facts are reflected in the decisions of the Synod at Ferrara[1]. The Synod took place on June 21, 1554.

[1] Printed originally in עברי אנכי, 1879, reprinted in pamphlet form. See Part II, p. 301.

The Takkanot provided that no book was to be published except with the sanction of three rabbis and the heads of the community in which it was printed. If the city where it was printed had no such committee, the heads of the neighboring community were to have the authority of permitting or refusing to permit the publication of the volume. The names of the Rabbis sanctioning the book and of the Community-elders who gave permission for its publication were to be printed at the beginning of the book. Otherwise, the sale or buying of the book would be prohibited under a fine of twenty-five scuti. A second provision was that if one of the litigants in a case had taken the matter before the Gentile authorities, he could not bring it back before the Jewish courts without the consent of the other litigant. This Takkanah is very lenient when one considers the seriousness with which the Jews of other countries looked upon the matter of taking Jewish litigations before Gentile courts. It seems that Jews could not prohibit appeal to Gentile courts in Italy, and so resorted to this rather mild refusal to consider any case that had been taken to the secular courts unless both parties asked them to interfere. Another important provision of the Takkanot was the one forbidding any Rabbi to give a decision in civil cases unless he was requested to do so by both parties. This Takkanah was intended to prevent a Rabbi from suggesting to one of the litigants under the veil of a decision what he ought to claim. A similar Takkanah had been established by R. Hayyim Or Zarua,[1] according to the testimony of R. Moses Isserles. This section is the only one which is quoted in any of the responsa collections.

The fifth section deals with the rights which a Jewish tenant gained over the house in which he lived. It will be recalled that one of the most important of the Takkanot attributed to R. Gershom is that forbidding any Jew from renting a house from a Gentile if a previous Jewish tenant had been dispossessed unjustly. The ordinance of these Italian communities remarks that some authorities

[1] Above, p. 73.

limited the operation of that Takkanah to cases where the house was still in the hands of the offending Gentile landlord, and were inclined to permit the renting of the house if it had been sold. The ordinance therefore expressly prohibited the renting of the house in any case. It thus established, at least so far as Jewish law is concerned, the principle that a Jewish tenant acquired rights in the house of the Gentile in which he lived. These rights were not merely personal rights against the landlord, for in that case they would cease to exist when the house was sold, but objective, in the house itself, and therefore continued even after the sale of the house.

The sixth section deals with another Takkanah of R. Gershom. In the discussion of the ordinance against bigamy it has been pointed out, that various opinions were expressed by the scholars of different countries and different ages in regard to the right of the husband to marry a second time if his first wife had no children. It was generally felt that R. Gershom could not have intended to interfere with Biblical and Talmudic law, and that therefore if there was no issue of the marriage, the Takkanah did not apply. Still the question remained whether the birth of a single child could prevent the husband from remarrying or at least two children were necessary. For the *Mishna* declares that it is commendable to be the father of both a son and a daughter. The Takkanah does not permit a second marriage in the case of the father who has only a single child.

These two sections show how far the German influence had developed over the Italian communities. The two ordinances just described deal with Takkanot originally promulgated for Germany and France alone. While it is true that the Takkanah against renting a house from which a Jew had been dispossessed applied with special importance to Italian conditions with the Ghettoes, yet the remarks about the Takkanah against bigamy show that it was not merely the conditions of the time that brought about the acceptance of these German Tak-

kanot but the influx of German Jews and German scholars into the country.

The last section of the ordinances provided that no *Kiddushin* was to be performed except in the presence of ten persons. The consent of the parents, or in the case of their death, of the two nearest relatives, is also required. The performance of *Kiddushin* in violation of the law as laid down would automatically result in the excommunication of both the husband and the witnesses. No provision is made here for the nullification of the *Kiddushin* contracted under the forbidden circumstances described. It is likely that the violent protest of R. Joseph Colon, the famous Italian rabbi, against the action of R. Moses Capsali, of Constantinople, in declaring void *Kiddushin* performed in violation of a similar ordinance made the Italian communities beware of the nullification of marriages.

Halberstam in his edition of the Takkanot has identified some of those who signed them. The most prominent of them by far were R. Meir Katzenellenbogen of Padua, and Isaac Abravanel, grandson of the still more famous Don Isaac Abravanel, who was amongst the Jews expelled from Spain in 1492. It is interesting to find the scion of the renowned Spanish family writings which are of German decent in endeavoring to create a strong Jewish community in their new home.

CHAPTER X

TAKKANOT OF CORFU

That the Takkanot here described were not the only ones enacted can be seen from the fact that very often the merest chance brings to light new ordinances in the most unlooked for places. In a manuscript *Mahzor of Corfu* in the library of the Jewish Theological Seminary, Professor Marx found some Takkanot which on examination appeared to be Takkanot made in 1642 in the island of Corfu. They are the more interesting as they give us some information about a community of whose internal life little is otherwise known. The Corfiote Jews who had held positions of importance in their communities in the fourteenth and fifteenth centuries gradually lost their social standing. As Corfu came under the domination of Venice, the Jews sank to the low position held by their Italian brethren at the time. It is said that at the time of these ordinances, there were no more than five hundred Jewish families on the island and that the population was diminishing.

As seen from the text before us[1] there were at the time two congregations on the island, the Italian Congregation, with whom were mixed such Spanish immigrants as had found their way to Corfu, and the Greek congregation, which is referred to in our text as "the other" congregation. The Italian Congregation who established these ordinances invited the Greek Congregation to join them in drawing them up, but the latter declined to take any part in the work. Thereupon the Italian congregation appears to have appealed to the Venetian governor to enforce these Takkanot.

We do not know whether or not the consent of the governor to these Takkanot was gained. The pages on which the text has come down to us, flyleaves of the *Mahzor*, are not well preserved so that many of the lines are

[1] See Part II, p. 316.

incomplete. This makes it difficult for us to be certain of the things about which we are most anxious to know.

Of the signatories to the Takkanot none are known otherwise, but the families of several are well-known. The Pipi family, two of whom took part in the synod, is known because one, Abraham Pipi, was among the seven Jews admitted to the bar at Corfu in 1698. The Di Mordo family which is represented here by Elijah di Mordo had several rabbis among those of Corfu, and several other noted members in more modern times.

Most of the provisions deal with the matter of marriage. Just as in the Takkanot of Candia so in these complaint is made that engaged couples are often guilty of misconduct. The betrothed are therefore forbidden to be together in private except during the month preceding the wedding. The custom of dividing the marriage ceremony into two parts, each performed at different times, was abolished, except for cases of emergency, and in such cases the marriage ceremony would have to be completed within a month. The curse of the Jewish Middle Ages, namely, the man who gave a girl something of value in the presence of witnesses and thereafter claimed her as his wife, was done away with by a simple expedient. All such marriages were declared void. The synod declared that it had the right of an authoritative Jewish *Beth Din* to annul such a marriage, and moreover, fined the bride, the bridegroom and the witnesses one hundred ducats each. An interesting ordinance is the one providing that the consent of the girl to the betrothal is necessary whenever she is more than thirteen years of age. That is a year beyond the age of majority for females as fixed in the Talmud.[1] But as engagements are not legally recognized in the Talmud at all, and have force only as communal arrangements, the synod doubtless felt free to set the age according to the needs of the time. Weddings on Friday were to

[1] Compare Harkavy, *Teshubot Ha-Geonim*, p. 87, from which it appears that there was a difference of opinion among the Geonim in regard to the matter.

take place in the forenoon so as to avoid violation of the Sabbath.

An ordinance regarding woman's dress follows which is however incomplete because of several lacunae. Just as in the Italian Takkanot,[1] the burden of seeing that this Takkanah is observed is placed on the husbands and fathers of the women.

Three following Takkanot deal with matters relating to death. They provide that everyone who is on his deathbed shall repeat the confession of sins, that no one shall cut his flesh in mourning for the dead, and that on the Sabbath or Festivals no woman should act as a professional mourner at a funeral of a Jew or a Gentile.

There is also an ordinance protecting orphans against neglect on the part of their surviving parent. If a man dies his wife is to obtain only the minimum *Ketubah*, and the property which she brought to her husband from her father's house. If the wife dies the husband is to inherit but one third of her property, the rest being given to the children.

A regulation about wine-selling follows. This ordinance is not altogether clear since we do not know much about the methods of sale. Moreover, it seems to represent rather a pious urging than a Takkanah that could be enforced.

While these Takkanot seem to throw an unhealthy emphasis on sex matters showing that moral conditions in the community were unsatisfactory, yet they reveal to us the Corfiote Community in a new light, struggling to maintain its Jewish life, and in common with the other Jewish communities, working to maintain the Torah in Israel

[1] See below, p. 293.

CHAPTER XI.

SYNODS OF THE SPANISH JEWS

While both Spanish and Franco-German Jewry developed as the Gaonate decayed, the Jews of the Peninsula remained in closer touch with Babylonian Jewry than did their northern brethren. There have been preserved more responsa of R. Sherira and R. Hai addressed to Spain than to any other European country. We may take the proportion of those which have endured through the ages as an index of the proportion of those which were written. It is no mere accident that the *Seder R. Amram* was composed at the request of a Spanish community. Indeed, the Spanish liturgy belongs to the Babylonian rather than to the Palestinian group, while the Italian and the Franco-German rituals are in many respects akin to the Palestinian family. The reason for this is obvious. Spain like Babylonia was a Mohammedan country. The language, the culture, the habits of the people, were very much the same on the banks of the Ebro as they were on the banks of the Tigris. Even after the Caliphate was divided, there was still much akin between the two parts of the Mohammedan Empire. This relationship could not but be reflected in the closer contact of the Jewish communities of the Mohammedan world. The Jews in the lands of Christendom who were living under completely different conditions, could not possibly keep in close touch with the Geonim, and tended to develop an autonomy that was unknown in the South. We have found traces of the influence of the Babylonian Geonim on the Jews of Germany and France, but by the end of the tenth century they were practically out of touch with each other.

These differences in language and in culture, the need of crossing several national boundaries in order to arrive in Babylon and the difficulty of receiving messengers

from the seat of the Gaonate, led to the rise in France and Germany of a type of scholar distinctly different from that which developed in Spanish soil. Alfasi, Ibn Migas, Maimonides, R. Meir Abulafia, Ibn Ezra, Ibn Gebirol and Judah Ha-Levi, to mention various Spanish scholars almost at random, were not very different from the Babylonian scholars who preceded them. Alfasi had his prototype in the author of *Halakot Gedolot*, Maimonides was a spiritual descendant of R. Saadya Gaon, R. Meir Abulafia had much in common with R. Sherira and R. Hai while Ibn Gebirol and Judah Ha-Levi, of whom we think primarily as poets, doubtless considered themselves first and foremost philosophers, having thus much less in common with Jannai and Kalir than with the Babylonian poets. These were quite different conditions from those north of the Pyrenees. Babylonia had no one who could be compared to Rashi or R. Tam. A book like the *Sefer Hasidim* would have been as dismal a failure at Pumbedita in the tenth or eleventh century as it would have been in Spain as a competitor to the *Hobat Ha-Lebabot* of Bahya. Where we understand the wide difference between Spanish and German Jewry, especially in their relations to the Geonim there will be no difficulty in seeing why the oppressed Jews along the Rhine, who produced no Samuel Ibn Nagdela and no Hasdai Ibn Shaprut, were still able to perfect a strong inter-communal organization, while their brethren in the South, with all their statesmanship and secular power which was so often combined with Jewish learning, effected little for the organization of the Jewish Communities. Other factors, too, must have entered into the matter. For instance, the very fact that Jews held such high offices in their respective kingdoms must have made it difficult for them to seek to gather in council with Jews outside of their kingdom, lest they be accused of lack of patriotism. The fact too, that during the larger part of the rise of Spanish Judaism there were constant wars between the Christians and the Mohammedans may have made union impossible.

Whatever the cause, the fact remains that while R.

Gershom, and after him R. Tam and others, were making strenuous efforts to build up a well-organized French and German Jewry, nothing was being done in any similar direction in Spain. During the thirteenth century, however, it became customary for Spanish Jews seeking Jewish scholarship to go to the Tosafistic schools in France to complete their education. Moreover, there was some influx of Jews from the North into Spain as a result of the repeated expulsions from France, and of the unceasing persecutions in Germany. Spaniards like Ibn Adret and Germans like Asheri, must alike have brought to the south news of the Rabbinic gatherings at Troyes and at Speyer, Worms and Mayence. As the idea spread, all that was needed to bring about a council was some important occasion. Such an occasion did arise when the Black Death was followed in Spain as elsewhere by numerous onslaughts against the Jews. It was evident that nothing but united action could prevent further disaster to the Jewish people, and so the various communities living under the rule of the King of Aragon, sent representatives to a council, which seems to have been held at Barcelona, to confer and take action in regard to the crisis.

1. THE SYNOD OF 1354

This council which met in 1354, appointed a Commission which was to be in power for the ensuing five years and which was to attempt to gain certain privileges from the Pope. The communities were also organized in a permanent association for their mutual protection. But in order that the agreement might become valid, it required the sanction of the King. Indeed, it seems to have been illegal to pass any resolutions unless they were made dependent for their ratification by the King. To induce him to ratify the agreement and also to help them by interceding for them with the Pope, in order to persuade him to grant them certain rights which are enumerated, the Commissioners were empowered to tax the people in order to raise a gift for the King's treasury.

The Council also established decrees regarding the

internal life of the Jews. But since these were in a separate document they have been lost. They probably dealt with Jewish luxuries of dress and food like the similar ordinances in Italy, in Castile and in Morocco.[1]

We have no further information in regard to the activities of the Commission. It is possible that the Communities of Catalonia refused to join the others even in the face of the imminent danger threatening them and that the plan failed for lack of unity. What ever may have been the outcome of the work of the synod, our sources again fail us, and nothing further can be said.

But dark days were now in store for the Spanish Jews. Their enemies were active and powerful, and their activity and power were increasing. As the wars to expel the Mohammedans from the country continued and became more and more successful, it was inevitable that religious fervor and hate should spread through the land. Moreover, those who had taken Jewish lives and looted Jewish homes after the Black Plague were only too likely to demand new offerings. It was, however, almost forty years before the incitements against the Jews culminated in the terrible riots of 1391. There is no need of recounting here the horrors of that year, which marks the beginning of the end of Jewish life in Spain. The number of Jewish slain reached thousands, and those forcibly converted were at least as many. Not only were the Jews of Valencia, Catalonia and Aragon attacked, the flame spread to the island of Majorca. The year 1391 meant to the Spanish Jews what the First Crusade had meant to the Jews of Germany. They were henceforth definitely a hated and persecuted people.

2. TAKKANOT OF CASTILE

The first serious attempt to organize the Jewish communities of Castile did not take place till almost a century had passed after the Aragonian council. In 1432, under the

[1] These Takkanot were originally published in the *He-Haluz* I,1. by Schorr. They have been reprinted with translation and notes in Part II, of this volume, p. 326 ff.

influence of a particularly able court-Rabbi, R. Abraham Benvenisti,[1] representatives of the communities of Castile gathered at the capital, Valladolid, for a conference which was to frame a constitution for the conduct of the Jews of that land. The document that was drawn up by the conference still exists, and it is far more detailed and complicated than any thus far discussed. Its very detail serves to throw light on the life on the Jews of Spain in that period to an extent that could be obtained from no other source.

It is divided into five chapters, which deal respectively with: a. Schools and Synagogues; b. Courts, their procedure and their power, the election of judges and other officials; c. Defamations, forced marriages and attempts to intimidate judges or other officials of the community through the power of the Gentiles, the sale of wine, and attempts to seize Jewish offices through non-Jewish interference; d. Taxes and community meetings; e. Luxurious festivities and lavish clothing. It might seem that the last section is given too prominent a place, and that the details of men's and women's clothing which are there discussed are hardly relevant to a fundamental code such as our document was intended to be. But when we remember the importance that was placed on the matter of restraint in clothing in the Italian Takkanot[2] and what an important part it played in all Mediaeval ordinances, it will no longer surprise us that the Castilian Jews considered the regulation of clothing a matter of prime importance.[3]

It does not seem that these Takkanot were ever put into effect. Perhaps the government was averse to them, or it may be that the communities whose plenipotentiaries had agreed on them, refused to accept them. In any case, we do not hear anything more of these ordinances. The Castilian communities remained independent and separate

[1] See J.E. III, 38b.

[2] See p. 243 note 3.

[3] The text of these ordinances has been published by Fernández y González in *Boletin de la Real Academia de la Historia* and reprinted therefrom in book form in 1886. An English abstract of the provisions of these ordinances is given in Part II of this volume, p. 348 ff.

until in 1492 they were united in their common ruin. The expulsion from Spain wiped out all distinctions that there might have existed among them; thereafter they were all alike homeless exiles, and when they had been scattered to the four ends of the earth, they felt more akin to one another than when they had been close together in the land which had been theirs for half a milennium.

APPENDIX

The following sources are referred to in this part of the volume and while they are not complete texts, it was thought best to make them easily accessible to the reader. They are therefore reprinted here.

Text A. is the quotation in *Mordecai*, *Gittin*, 455, from the Takkanah of R. Tam, against bringing complaint against the validity of a *Get*. The text given in *Mordecai* has been compared with that quoted in the Halberstam Ms., now in the library of Jews College, London, cat. Hirschfeld, 130, fol. 57b. The variants from the Ms. have been placed in parantheses and marked צ.

Text B. is the quotation in a responsum of R. Moses Taku (printed in Res. R. Hayyim *Or Zarua*, 179 and Res. R. Meir b. Baruch, ed. Rabinowitz 114) of the Takkanah of R. Tam against going bail for another Jew. For a further discussion of this curious enactment see above page. The text below is that published in the Responsa of R. Meir, the variants from HOS are marked ח.

Text C. is a quotation of the responsum of Rashi (Mueller, *Teshubot Hakme Zarfat*, 11b) dealing with the *herem* of R. Gershom against insulting Jews who returned to the fold after having been forced to leave it through the severe persecutions.

Text D. is a quotation from the responsa of several German Rabbis, which are printed in the Responsa of R. Hayyim Or Zarua 222. It deals with the right of a community to tax its members.

Text A.

כך החרים ר"ת והסכים רבינו משה תלמידו עמו וכל הגדולים גזרו בכנופיא של שוק טרוייש באלה חמורה ובגזרה חמורה שלא יקרא שום בר ישראל עירעור על שום גט אחר נתינתו ואם לא ינתן בפניו אל יאמר אילו היה ניתן בפני כך הייתי מערער על העדים או על הגט או על שאר דברים

על כל אלה גזרנו והחרמנו באלה ובנידוי ובשמתא בשם מיתה ובשממה (צ. יהיה) והחרמנו בשם (צ. והחרמנו בשם ח') ליפרע ממנו ומכל משפחתו ובשממה יהיה מי שיעשה אלה (צ. ובשממה.....יהיה ח'.) בארור ליקום ובשמתא ליהוי לכל ישראל ולא יהיה אדם רשאי להתירו עד עמוד כהן לאורים ותומים אך יוכלו בני אדם להתיר ביניהם להיות להם עסק עם אותו איש מזמן לזמן אך לא לכל הימים כי על דבר זה רבתה מריבה בישראל כי הפריצים שומעים לרחק אבל לא לקרב ובזויי משפחה עושין כן להשפיל הגבוה ולשום שפלים למרום והמערים ערום יחרם חרום לומר לולי הגזירה יש לי להשיב למען ירצה להקשיב דבורו בשתיקה לאחרים המקום יחרים אותו וינערנו מביתו ומיגיעו בל שורש בארץ גזעו והכל עשינו לש"ש מפני הרמאים חלקו מחמים ימסו כמו מים ואנחנו נקיים לפני אלקים היים והוא למען רחמיו יעמידנו על האמת והשלום יעקב ברבי מאיר

Text B.

מי משלנו אל מלך ישראל.....ועל (ח. על) כל בן ברית איש ואשה גזרנו באלה אשר יתערב נגד השרים היושבים תחת השלטון (הצרי) משקוע שום אדם ואם ח"ו יעבור על גזירתינו גזרנו על המתערב שלא יפצנו ועל כל בן ברית גזרנו שלא להושיב ב"ד על כך אך על היהודים היושבים שלא (ח. שלא ח'.) תחת השלטון (הצרי) לא גזרו (ח. גזרנו) שלא לערבם

Text C.

התבוננתי בשאלתם ובעומק ראיותיהם ויש בהם שיש לתלות עליהם ומהן שאין הנדון דומה להם והנני משיב כמה שהראוני מן השמים. אם יבורר בעדים מהוגנים המוחזקים בגזירת הרב ח"ו ששינה בה מחומר שאר אלות וסיג הנוהג בדורות האלה האחרונים והוציא מפיו לשון שמתא וגם גזר שלא יזכר גנאי זה לבעלי תשובה עצמן ולא לדורותיהם והותרה בה המפקיר בשם גזירת הרב אין לנו לנהוג קלות ראש בנדויו כי אין גדול כמותו להתיר ורואה אני את דברי התלמיד בזו שאם נדה הרב אדם בחייו ועמד במרדו ולא בא לפניו להתיר נדויו אין לו התר עולם וכן אם ח"ו שינה בזו בלשון שמתא להחמיר בה ממנהג הנוהג אין לו התר עולם.....וכל שכן רבינו גרשם זכר צדיק וקדוש לברכה שהאיר עיני גולה וכולנו מפיו חיין וכל בני גלות אשכנז וכיתים תלמידי תלמידיו הן ובדבר הזה לכבוד שמים נידה שהרי בסיני הזהרנו על כך לא תונו איש את עמיתו (ויקרא כה. יז) באונאת דברים הכתוב מדבר אם היה בעל תשובה לא יאמר לו זכור מעשיך הראשונים אם היה בן גרים לא יאמר לו זכור מעשי אבותיך (ע" ב"מ נ"ח ב').....אבל רואה אני את דבריכם שכל זמן שלא יעידו המוחזקים בה ששינה בה הרב להחמיר כנון נדוי עולם או שמתא צריכין אנו לדון את הצדיק לזכות שלא קללה זו תלה בבאין אחריו שמא ח"ו

יתקפנו יצרו לאחד ויעבור בכעסו עליה ויודע אותו צדיק שאין בתלמידים המפרנסין אחריו את הדורות שיתיר את נדיו ואי אפשר ליבדל המינו כל הימים ונמצאו כולן עוברים.....

Text D.

.....ראובן תקף את הקהל לדין ובררו להם אפוטרופא אחד והנה ראובן טען הקהל שאלו מני ליתן להם מס כאשר נתנו למלך ממון הרבה ואמרתי להם אנכי אשבע שאין לי ממון שאתן להם ולא רצו לקבל שבועתי אך אמרו כך וכך ממון יש לך ליתן ולא נקח פחות וגם לא נקבל שבועתך והיה לי משכון של ההגמון כי מעט כסף של ילדי היה בידי ואמרו לעבד ההגמון ליקח המשכון.....אליעזר הקטן ברבי יהודה קלונימוס בר' גרשם מרדכי בר' יוסף

תשובה.....נראה לנו שהדין עם ראובן דהא דאמרינן הפקר ב"ד הפקר (גטין ל"ו ב') זה כשנחרין דבר על האדם שהוא יכול לקיים.... .....אכל אם יארעו אונס חלילה להפקיר נכסיו דרחמנא פטריה וכ"ש הכא שנחרים ומחייבים אדם לתת מה שאין לו.....ומתוך דבריכם הבינו שהקהל לא גזרו על שום אדם לתת כי אם משלו המיוחד לו ולא משל אחרים וא"כ למה נחייב את ראובן לתת מה שאין לו והא דאמרינן בהשותפין (ח' ב') רשאין בני העיר להסיע על קיצתן זהו נמי בדבר שהוא תקנת הצבור ויש בידם לקיים הדבר.....וכ"ש הכא שלא יועיל מה שנחרין על האדם לעשות ולתת מה שאין בידו והא דאמר (ב"ב ס' ע"ב) אין נחרין גזרה על הצבור אלא אם כן יכולים רוב הצבור לעמוד בה ומשמע הא אם יכולין רוב הצבור לעמוד בה נחרין אפילו על המיעוט שאין יכולין לעמוד בה י"ל דההיא לא מירי להוציא ממון מיד אדם אבל להוציא ממון כי הכא לא ועוד שצווח כנגדם ואמר איני יכול לכנוס בנזרתם.....ודאי אם ראובן גברא דאמיד הוא והקהל עשו תקנה שלא לקבל שבועות מפני תקנת הקהל יכול לכוף את ראובן לתקנתם אבל אי לא אמיד למה ירדפוהו בחנם לקונסו.....

יהודה ב"ר קלונימוס משה ב"ר מרדכי ברוך ב"ר שמואל

וזה השיב רבינו אבי העזרי זצ"ל.....אם הובררו טובי העיר מתחלה להנהיג קהלם בכל דבר אפילו יחיד שבררו מה שעשה עשוי בתקנת הקהל ויפתח בדורו כשמואל בדורו.....ואפי' יחיד דגרס' בירושלמי דמגלה פרק בתרא (פ"ג ה"ב עד' א') שלשה מבית הכנסת כבית הכנסת ז' מבני העיר כבני העיר מה אנו קיימין אם בשקבלו עליהם אפילו יחיד ואם בשלא קבלו עליהם אפילו כמה אלא כן אנו קיימין בסתם משם אני למד דהיכא דבררו אפילו יחיד נמי.....ופי' במעמד אנשי העיר שעושין בפרהסי ואין מוחה שאם תפרש שצריכים לומר הן א"כ לא עשו ז' טובי העיר אלא כולם ואפילו בכרכים נמי ונ"ל שאם אחד מבני העיר מוחה בדבר שרוצין ראשי הקהל לעשות או לגזור חרם אם רוב הקהל מסכימים חלה החרם כאשר אבאר ואם לא

הסכימו רוב הקהל ומיחו אך הראשים אינם יכולים למחות דמה לי לא קבלו בתחלה מה לי בסוף לפי הירושלמי אבל אם הרוב הסכימו והמיעוט מיחו חלה הגזרה עליהם בעל כרחם.....והארכתי לפרש לפי שיש מרבותי שהיו אומרים דהא דתניא (ב"ב ח' ב') רשאין בני העיר לקיים תנאם ולהסיע על קיצתם ה"מ אם כולם נאותו יחד והוא עמהם ושוב עבר על תנאם דומיא דהנהו תרי טבחי אבל בלא דעתו לא אלימי לעשות והפקר ב"ד הפקר לא שייך הכא כך היה אומר מורי הזקן ממיין (אולי צ"ל ממיץ) זצוק"ל ואני את אשר עם לבבי כתבתי ואם שגיתי הורני רבותי וחיים ושלום על ישראל ישראל (כ"ה בדפוס) אליעזר ב"ר יואל הלוי

ורבינו ברוך מצא בספר הישר של ר"ת זצ"ל שפירש כן בבבא בתרא פ"ק דאין רשאין בני העיר להסיע על קיצתן אא"כ נאותו כולם.

PART II

TEXTS AND TRANSLATIONS.

CHAPTER I.

TAKKANOT OF R. GERSHOM.

The codified Takkanot of R. Gershom are less well-known than those regarding plural marriage and compulsory divorce but are of no less importance. While the texts of the ordinances regarding marriage and divorce have been lost, the texts of the ordinances regarding civil law have been preserved in several versions. None of these is in its original form, but nevertheless by a comparison of the readings of the various texts we are able to form a clear notion of what the ordinances of R. Gershom were.

In establishing the texts of the Takkanot of R. Gershom (TRG), I have had the use of seventeen versions. Of these three are very late texts in which the Takkanot of R. Tam have been interwoven with those of R.Gershom. They are therefore discussed separately in chapter V, (below, p. 205). The remaining fourteen have been used as a basis for establishing the text that follows.

The versions used for the establishment of the text are:

Source	*Hebrew Notation*	*English Notation*
Quotation of TRG in the Takkanot of Rhine Communities (See RMP 1022 and below chapter VII)	א	S
Munich Talmud Ms. (Strack's photographic edition, also printed in Taussig's *Meleket Shelomoh*, II. p. 13)	ב	M
Mahzor Vitry (p. 798)	ג	V
Br. Mus. Ms. Add. 11639 (Marg. 1056)	ד	C

Merzbacher Ms. 75 ..... ח ..... E
Kobez Debarim Nehmadim (compared with Maharil Ms. in library of the Jewish Theological Seminary) ..... זא ..... JA
Bodleian Ms. Mich. 582 (Neubauer 666) .... זב ..... JB
Kol Bo, section 116 ..... ה ..... K
RMP 153, (printed also in RMP 1022) ..... וד ..... P
Bodleian Ms. Opp. 225, (Neubauer 970) .... וא ..... PB
Br. Mus. Ms. 1389 (See MGWJ 1893, p. 171) .. וג ..... PC
Appendix to the Bomberg edition of *Likkute Ha-Pardes Venice* 1519, end ..... וב L
Halberstam Ms. now in Montefiore Library, Cat. Hirshfeld, 130 ..... וה ..... H
Another Halberstam Ms. now in Montefiore Library, Cat. Hirshfeld, 146j ..... וו ..... PF

In all of these texts except S, there occurs after section 1, a paragraph regulating the method of suspending the *herem* against plural marriage and the release of betrothed couples. This paragraph mentions R. Gershom by name in most of the texts, and where his name is omitted, it is evident that the scribe emended the text, because it seemed strange to have R. Gershom mentioned in the third person in a text which was ascribed to himself. In view of the fact, however, that the paragraph is lacking in S, which we shall presently see is one of the oldest of our sources, and in view of the fact that unlike the other sections of TRG it is not a statement of an ordinance at all, but a regulation of the procedure to be followed in the suspension of an ordinance, we may well assume that it was not part of the original text of TRG. Hence it has been omitted from the text as printed below, and is discussed separately in Chapter II.

In all the texts, except S, there is also added at the end a statement of the law that one must not leave a synagogue in which there is only a precise quorum for religious services. In one of the texts discussed in Chapter II (AA, Heb. אא) this provision is attached to the regulation concerning the suspension of the ordinance against plural marriage.

Again we follow S in not considering this section part of the original TRG. Nevertheless this section has been printed below, since it is most conveniently discussed in connection with the remainder of the texts before us.

By omitting these two sections, TRG is reduced to a code of ten sections, nine of which deal with fundamental rights of communities and individuals in their relation to each other. The exception is paragraph 6, which provides that no book or other article entrusted to the care of one person by another shall be retained by the bailee because of any claim against the owner. This is purely a rule of civil law and can hardly be classified as one of the important basic rules such as the provision concerning the right of summons (section 1) or the right of the community to collect the taxes before suit can be brought for review of the assesment (section 7). Moreover this is the only section that mentions any authority. The authority mentioned is R. Tam, who was born more than half a century after the death of R. Gershom. This difficulty was felt by the writer of V who omits R. Tam's name although he includes the section. But the omission of the name can be regarded only as an unsuccessful emendation, since the context requires the mention of some authority. We must therefore assume that the whole of section 6 is a later interpolation.

Section 7 too appears to have been inserted at a later time. Although it deals with a rule that naturally would be included in such a code as this, it seems that R. Meir b. Baruch did not have that section in his text. For he refers to the rule laid down in it, providing for the payment of the tax by the assessed person before bringing suit for the revision of his assessment, as a "custom of the ancients" (RMP 708). It cannot be doubted that if this section had been found in R. Meir's text of TRG he would have quoted it, or referred to it as the ordinance of R. Gershom, just as he quotes section 5 in a similar connection (RMB p. 209).

Since we have definite proof that sections 6 and 7 are later interpolations, doubt may well be cast on the genuine-

ness of the ascription of all but the first five sections. On the other hand there can be no doubt of the authorship of part of TRG by R. Gershom since section 3 is quoted as a Takkanah of R. Gershom by so early an authority as R. Aaron of Lunel (thirteenth century) in his *Orhot Hayyim*, Part I, Laws of the Synagogue, § 26. Similarly, as has been stated, section 5 is quoted by R. Meir b. Baruch.

To the theory that the original TRG contained only five sections, the objection may be raised that in the Takkanot of the Rhine Communities, dated 1220, TRG is given in ten sections (S). But as will be seen in the discussion of those ordinances (p. 225), there is good reason to believe that TRG was inserted into the text by a synod that met long after 1220. It seems that during the first half of the thirteenth century there were a number—at least three—recensions of TRG current in German communities. The original version in five sections was the one used by R. Meir b. Baruch. Another, strongly influenced by the enlarged French versions had ten sections, and also included the regulations concerning the release of the *herem* against plural marriage (C). A third (S) contained ten sections but was still without the regulations concerning the suspension of the *herem* against plural marriage. That the text of R. Meir was not S, can be seen by a comparison of the text of his quotation with the corresponding section (5) of S. It is much more akin to C.

It has been noted above that S differs from all the other texts of the Takkanot in omitting the regulations about the suspension of the ordinance against plural marriage and the final paragraphs about leaving the synagogue when there is only a precise quorum for conducting services. Sections 7 and 9 are given there in a reading that differs quite widely from that of the other texts. It is evident that S was not used by the writers of the other texts, nor was it influenced by them, except that since it is descended from a common source with them the actual provisions of the Takkanot are the same.

It is difficult to determine whether S or M represents a version more nearly akin to the original. While M has

introduced the regulations concerning the suspension of the ordinance against plural marriage, and also the paragraph about leaving the synagogue when the quorum for services will thus be destroyed, in several cases it has preserved older readings than S. Thus in section 2, it will be seen that S agrees with all the texts in having two paragraphs while M has only one (See the notes to that section). Again in section 5, it will be proven in the notes the reading of M is older than that of any other text.

M and S are thus both outgrowths of an older text. V is akin to M, but while both M and V claim to come from the pen of R. Moses of Berne it is probable that V made use also of some other source.

V is the ancestor or is akin to the ancestor of most of the other texts that have been preserved. These fall into three families. The first class consists of two members—C and E. C has been strongly influenced by some German texts. Like S it mentions the *Seder Kedushah* and refers to the interruption of the reading of the Torah, in section 2, but on the other hand it contains the sections omitted by S, and does not follow the readings of that text in sections 7 and 9. It is noteworthy that the writer living in Germany where *Zarfat* generally meant not the province of Isle de France, but the country of France, substitutes Poitiers for the *Zarfat* of the French texts. (below p. 139).

C and E are alike, however, in that they read in paragraph 5, בני העיר שעושין תקנת העיר או שאר תקנות; in the regulations concerning the suspension of the *herem* against plural marriage they in the regulations concerning the suspension of the *herem* (See chapter II) they read חתן וכלה instead of איש ואשה of the other texts; in paragraph 3, they read ואם השאיל whereas the S, V, and K read ואם אדם משאיל, while M read המשאיל; in paragraph 6 they read in common with S אין לנפקד whereas K and V read וגם אין לנפקד; in paragraph 8, they read אנשי הכפרים while K and V read ואם אנשי הכפרים and S and M have בני הכפרים. It is thus seen that E and C have much in common as opposed to other groups of the earlier texts.

The second group of texts are those included in the class

J–JA and JB. In establishing the text of JA use has been made not only of the *Kobez Debarim Nehmadim*, but of the Ms. of Maharil which is closely akin to it. JB is a little more diffuse than JA but is not essentially different. The readings of these texts are characteristic and are so different from those of the other texts as to place them unmistakably in the same group. For instance the words מעיר אחרת are inserted in the first line. In the paragraph dealing with the Yom Kippur candles, there is an additional provision exempting the candles brought by women. There is a quotation from R. Isaac of Falaise (?) regarding the custom of stealing in sport on Purim.

The third group consists of K and of a series of texts that seem to be based on a text very much akin to K. This group is characterized by many variations only a few of which can be noted here.

In paragraph	1,	they	insert		חלה עליו התקנה (החרם)
			and		ואין צריך להמתין עד שיפסקו הדין
"	"	7,	"	insert	מן המתנה עצמה
"	"	8,	"	add	ויכולין בני העיר להכריחו

Besides K there belong to this group, P, PB, PC, PF, H and L. K is more akin to the earlier texts than the others since they all have variants like the following:

They insert מחזיק בבית הכנסת in paragraph 2.

They insert שלא יבא להתפלל בו in paragraph 4.

L represents an older text than P, PC, PF, or H. Like K and the other earlier texts it reads in the first paragraph שאין יכולין לכתוב instead of אלא שאין כותבין סרבנות עליו; in the regulation concerning the suspension of the *herem* against plural marriage it reads in common with most of the older texts משלש ארצות משלש קהלות while the later versions of this group omit משלש קהלות.

It is not probable that K is the source of the others since it has a number of variants which are not reproduced in them. Mention should also be made of the fact that in PC the sections are numbered and that its writer seems to have had available material not in the original of the other texts, since he inserts the rule about the candles

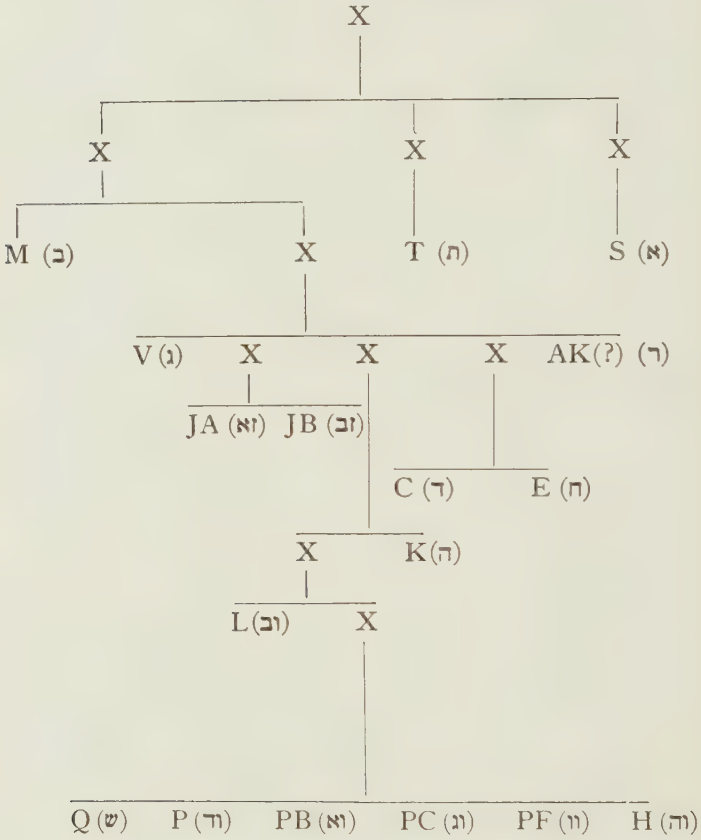
of women for Yom Kippur which otherwise is found only in JA and JB. PB also adds large sections not found in the other texts.

Besides these complete texts, individual sections are quoted in several collections of responsa. Section 1 is quoted by R. Moses Mintz (Res. 83), but as it is obvious that his source is S, his quotation is of little help in establishing the text. This section is also quoted in a German responsum of uncertain authorship, dated 1569 (printed in *Ozar Tob*, 1883, p. 5), from a source akin to the K—P group. Section 3 in quoted by R. Aaron of Lunel in *Orhot Hayyim*, I, Laws of the Synagogue, 26. His text seems to be quoted from memory, so that aside from being obviously based on one of the earliest texts, akin to M, V, C and S, it cannot be determined to which of these groups his text belonged, or whether it did not represent a group otherwise no longer known. The quotation of section 5 in RMB p. 209, is definitely from a text akin to C, and that in Res. R. Joseph Colon 17, from a text of the K group.

In printing the text below, it has seemed best to use M as the basic text, but where S was very different that text is printed in a parallel column. The changes in the M text where those occur in brackets are from V. M as are not found in V and are believed to be additions are marked by parantheses. The important variants have been placed in footnotes. The variants from the quotation of R. Meir b. Baruch are marked ת (English T), those from the quotation of R. Joseph Colon are marked ש (English Q); those from R. Aaron Ha-Kohen of Lunel ר (English AK) and those from R. Moses Mintz צ (English MM); those from the responsum in *Ozar Tab*, ע (English O).

It may help clarify the relation of the various texts to one another, to indicate it in the following diagram.

TAKKANOT OF R. GERSHOM



TEXT

1. מקום[1] שיש בו חרם [של] ב"ד[2] אם יעבר[3] אדם דרך [ל]שם והזמינו אחר[4] לדין ע"פ החרם[5] בפני עדים כשרין[6] אפי' בשוק חלה עליו החרם

1 מקום...ב"ד] ה. וא. וד. כל מקום שיש חרם ב"ד וב. וה. בכל מקום שיש וו. כל מקום שיש ע. אם יש מקום.

2 זא. זב. מב"ד. ע. חכם ב"ד.

3 א. יבא ה. ח. עבר זא. אם עבר שם איש מעיר אחרת.

4 ד. ובא אדם אחד והזמינו לדין. ג. ע. וא. וג. וד. ובא אחר והזמינו לדין וא. ובא אחד ה. וב. והזמינו לדין. ובא חברו והזמינו לדין. ח. והזמינו לב"ד אדם אחר.

5 ע"פ החרם] א. ע. ל'. ד. ע"פ עדים.

6 א. ג. ד. ה. וב. וג. וד. וה. זא. זב. ל'. וא. ע. בפני בית דין וג. בפני (ב"ד) [ותיבת ב"ד נמחקה] וה. בפני עדים בפני ב"ד וא. בפני עדים ל'. זב. ואפי' המזמין מעיר אחרת.

עד[1] שיבא ויטעון בב"ד[2] ואפילו בלא עדים[3] דלא איברו סהדי אלא לשקרי אלא שאין כותבין סרבנות[4] אלא בעדים ואחר טענותם[5] ילך הנתבע לדרכו[6] ועל התובע לחזור אחריו[7] לשלוח לו פסק דין.

ב	א
2. כשאדם מזמין חבירו לדין [וחבירו מסרב] אינו יכול לבטל יוצר ותפילת מנחה עד שיבטלם ג' פעמים באחרונה ואחר כן מבטל לכלן.	וכשאדם[8] מזמין חבירו לדין וחבירו מסרב אין יכול לבטל תפלת יוצר או תפילת מנחה או קריאת התורה[9] עד שיבטל ג' פעמים תפלת[10] ערבית או סדר קדושה אח"כ[11] יבטל כל התפלה עד שיעשו לו דין ואם יש שתי בתי כנסיות בעיר[12] אין יכול לבטל כי אם בביר הכנסת שהנתבע[13] יבא שם להתפלל וכשבטל ג' תפלות אז יכול לבטל בשתיהן.[14]

1 וא. וג. וד. וז. ע. מיד שיבא לב"ד לטעון וה. וב. ומיד צריך לבא לבי' דין לטעון.

2 ד. ואפי' מצאו בשוק.

3 ה. חלה עליו התקנה. וא. וג. וב. וד. וה. וז. חלה עליו החרם. חלה עליו החרם מב"ד.

4 אלא...כותבין] וא. וג. אלא שאין יכולין לכתוב עליו. וה. שאינם יכולים לכתוב עליו. זא. אלא שאין בו תביעת סרבנות.

5 ילך...לדרכו] ד. וא. וב. ח. אם ירצה הנתבע ללכת לדרכו ילך. ג. ה. וב. וג. וד. וז. זא. [זב. אם רצה הנתבע ילך. וה. ילך לו הנתבע לדרכו אם ירצה.

6 ה. וא. וב. וג. וד. וה. וז. ואין צריך להמתין עד שיפסקו הדין. [וז. לו דינו].

7 אחריו...לו] ה. אחרי השלמת. וג. ולשגר לו. וה. לחזור ולשלוח.

8 וא. וב. וג. וד. וה. וז. מחזיק בבית הכנסת ומזמין.

9 ג. ד. וה. וא. וב. וג. וד. וה. וז. זא. זב. או קריאת התורה ל'.

10 ג. ח. תפלה. ה. אלא א"כ בטל ג' פעמים רצופים. וא. וב. עד שיבטל ג' פעמים תפלה. וב. אם לא בטל שלש פעמים תפלות. וג. וד. עד שיבטל תפלה ג' פעמים. וה. עד שיבטל תפלה ג' פעמים רצופות. זא. זב. וכשבטל ג' פעמים רצופים אז יכול [זא. רשאי] לבטל הכל יוצר ומנחה. ד. סדר קדושה בשחר.

11 [אח"כ...דין] ג. ד. ה. ל'. וא. וב. וג. וד. וה. וז. יכול לבטל כל התפלות. זא. זב. עיי' הנהה ג'. זא. גם יש חרם קדמונים שלא לבטל תפלה לא בשבתו' ובי"ט בשביל שום תביעה שיש לאדם על חבירו אם לא בטל כבר ג' תפלות ואם בשביל תקנת הקהל אפי' לכתחלה רשאי לבטל.

13 ג. ד. וא. וג. וד. וה. וז. זא. זב. או יותר. וב. או שלשה. ה. ואין יכול לבטל תפלה כ"א בבית הכנסת אשר הוא שם אבל אם בטל ג' תפלות רצופות יכול לבטל לכל בתי כנסיות.

13 ג. ח. שהנתבע מתפלל. ד. וג. באותו שהנתבע שם. וא. שהנתבע מתפלל שם. וד. שהנתבע בו. וה. וז. שהנתבע מתפלל בו. זא. זב. בבית הכנסת שהנתבע שם.

14 ג. כולן ד. זא. זב. בכולם. ה. לכל בתי כנסיות וא. מכל בתי כנסיות תפלה בעיר. וג. בכל בתי כנסיות העיר. וד. וז. מכל [וה. בכל] בתי כנסיות שבעיר. וה. בכל בתי כנסיות שיהיו בעיר.

3. המשאיל[1] ב"ה לרבים[2] ויש לו ריב (ומסה) [ומצה] לאחד מהם אינו יכול[3] לאוסרה עליו[4] אם לא יאסרנה[5] לכולן[6].

4. מי שאבד לו אבדה הרשות בידו[7] (לבטל תפילה) [להכריח הקהל להושיב ש"ץ][8] עד שיקבלו[9] כל הקהל חרם שכל מי שיודע מאבדתו[10] שום דבר ילך ויודיענו[11] ואין אדם יכול לִדחותו[12] לומ' [לא אכנס] בחרם אך [אבא][13] לך לדין[14] (וכן נמצא בספר ברזילי[15] בתשובת גאונים ותקנתם חה[16] לשונם מי שיש לו טענת ספק על חבירו אינו יכול להשביעו היסת[17] אבל יכול להחרים על כל הקהל סתם והנתבע עמהם[18] ויודו האמת ואין[19] איש יכול לעכב יש[20] לקיים דברי הגאונים כי מספק יכול להשביע בחרם[21] בלא הזכרת איש עכ"ל ברזילי)

1 א. ג. ה. וא. וג. זא. זב. ואם אדם משאיל. ב. איש שהשאיל בית. ד. ואם השאיל. וד. וה. וו. ואם אדם משאיל ברשותו.

2 א. לקהל. ק. לב"ה"כ.

3 א. ג. ה. וא. וב. וד. וה. וו. ד. ח. זא. זב. אינו רשאי.

4 א. על אותו אדם. ג. ה. ח. לאותו אדם. ק. לו. זא. זב. לאותו האיש. וא. וב. לאותו אדם שלא יבא להתפלל בו. וג. לאותו האיש לבד. וד. וה. וו. לאותו אדם שלא יתפלל שם [וה. בו].

5 א. ג. ד. ה. ח. אם לא יאסור לכולם. ק. אא"כ יאסור אותה לכל הקהל ביחד. וא. אם לא יאסור רשותו לכל הבאים לשם (ועיי' למטה הוספהב, שהעתקתי תקנות אחדות הנמצאות בכ"י פה). וג. אם לא יאסר לכל הבאים להתפלל בו. וב. וד. וו. אם לא יאסר רשותו לכל הבאים שם להתפלל. וח. אם לא יאסור אותו בית הכנסת לכל הבאים להתפלל בו.

6 זא. זב. וכן הדין בספר תורה.

7 ג ד. ה. יש כח בידו.

8 ה. וד. להושיב החזן.

9 ג. ד. ה. וא. וב. וג. וד. וה. וו. זא. זב. עד שיכנסו כולם בחרם. ח. עד שיכולם יכנסו בחרם.

10 א. ג. ה. ח. וד. וה. ממנה. ד. כלום מן האבדה. וב. שום דבר. וג. שום דבר ממנה. זא. זב. באותו דבר שיניד.

11 ה. יודיע לאחד צנוע מאנשי העיר. ג. וו. שיאמר לו. ד. יודיע לו. ח. שיאמר.

12 א. לדחות עצמו. ג. לדחות התובע. ה. ל'. וא. ואין אדם יכול לידחות. וג. ואין אחד מהם יכול לסרב ליכנס. וד. ואין יכול התובע לומר. וה. ואין יכול לומר הנתבע. זא. זב. ואין אדם יכול לדחות הדבר.

13 א. ארד עמו לדין ולא אכנס בחרם.

14 ד. אכן יאמר אלך עמו לב"ד. וא. וב. וג. וד. וה. אך אני מזמן לך לב ד.

15 א. חה נמצא בספר ברזילי. ג. ד. ה. זא. זב. ח. וכן נמצא [ד. מצינו] בספר ברזילי כי תקנת גאונים הוא. וד. וכן נמצא בספר ר' ברזילי בתקנת הגאונים. וא. וכן נמצא בספר רבינו יודא ברברזאי בשם רב סעדיה ורב האי גאון והגאונים.

16 ההוספה הזאת נמצאת רק בב' ובוא'.

17 וא. שבועת היסת.

18 וא. ואין שוא [צ"ל ש"וא=שום אדם] יכול לעכב הנתבע.

19 וא. ואין.....לעכב ל'.

20 וא. ל'.

21 וא. בחרם סתם.

ב	א
5. אם עשו הקהל תקנת עניים או תקנות אחרות והסכימו הרוב אין המיעוט יכול לבטל ולומר נבוא לב"ד להתיישב בדבר כי הכל לפי ראות טובי העיר לפי מנהג קדמונים או לפי צורך שעה.	ואם[1] עושי' בני העיר תקנת עניים[2] או תקנות אחרות והרוב[3] מתרצים בדבר מן[3] המהוגנים אין האחרי' רשאי' לבטל התקנה ולומר נרד[5] עמכם לב"ד כי[6] אין ב"ד לישב ע"ז[7] כי הכל הולך[8] לפי[9] ראות טובי העיר כי[10] כן מנהג קדמונים.

6. המפקיד[11] ספרים אצל חבירו אין כח לנפקד לעכבם[12] בשביל שום חביעה שיש ל' עליו[13] ומכל זה חרם קדמונית[14] הוסיף רבינו ת"ם[15] על[16] כל

1 ד. ח. ת. בני העיר שעושין וא. ואם עושין בני אדם.

2 ד. ח. או שאר תקנות. וו. זא. זב. עניים.....אחרות ל'. ת. ותקנת העניים ושאר תקנות.

3 ד. ורוב המהוגנין מתרצים יחד. ה. ורוב בני העיר מן המהוגנים מתרצים בדבר. זא. זב. ורוב המהוגנים מתרצים. ת. ורוב מן המהוגנים מתרצים בדבר.

4 יא. וב. וג. וד. וה. וו. והם מן המהוגנים.

5 ג. ד. אבא לב"ד. ח. נבא לדין. ה. נבא עמכם לב"ד. וא. וב. וד. וו. ואין [וד. לו] לדחות שלא יכנס בתקנת חבירו כ"ע ע"פ ב"ד. וג. ואין יכולין לדחות ליכנס בתקנה עם חברן אלא ע"פ ב"ד. וה. ואין ואין אדם יכול לבטל התקנה ולומר אני מוחמן לבא לב"ד ולא אכנס כי אם ע"פ ב"ד. זב. ולדחות שלא יכנסו בתקנת חבריהם כ"א ע"פ ב"ד ב"י.

6 ד. ח. להושיב ב"ד על כף. ה. כי אין לישב ב"ד. וא. צריך לישב בדבר. וב. יד. כי אין ב"ד לישב. וג. כי אין להושיב ב"ד על כך. וה. שאין ב"ד לישב בדבר.

7 ג. ה. זא. זב. בדבר.

8 ג. ד. ת. ה. וא. וב. וג. וד. וה. זא. זב. הולך ל'.

9 וה. לפי רוב טובי העיר.

10 ג. וה. וו. כמנהג קדמונים או כפי צורך שעה. ד. ת. כמנהג קדמונים. א. אי נמי צורך שעה ה. ומנהג קדמונים הוא או כפי צורך שעה. זא. לפי המנהג הקדמון או לפי צורך שעה. זב. לפי מנהג הקדמוני' או לפי צורך שעה.

11 [המפקיד...לעכבם] א. ב. ד. ה. וא. וב. וג. וד. וו. זא. ונם [א. ד. ואין] אין לנפקד לעכב ספרים הנפקדים אצלו [א. הכופקדים אתו]. וה. זב. נם אין לנפקד לעכב ספרים המופקדים אצלו.

12 זב. או השאולים לו.

13 א. ג. ד. ה. וא. וב. וג. וד. וה. וו. זא. על המפקיד. זב. על המפקיד או על המשאיל.

14 א. כי חרם קדמוניות הוא. ג. מכל זה יש חרם של קדמונים. ד. מכל זה יש חרם קדמונית. ה. על כל זה יש חרם קדמונים. וא. עיי' למטה הערה ב'. וב. וד. וה. מכל אלה שכתבתי יש חרם מתקנת קדמונים. זא. זב. ל'.

15 א. רבינו יעקב. ג. ל'.

16 א. ה. ח. שלא לעכב כל פקדונות ג. זא. זב. כל פקדונות שלא לעכב. ד. שלא יעכב שום פקדון. וג. ונור שלא לעכב שום פקדון. וד. וה. על זאת הנזירה על כל הפקדונות [וה. שיש לו] שאין לעכבם. וב. וג. וד. וה. בשביל שום חביעה שיש לו על המפקיד. זא. זב. בשביל שום חביעה.

הפקדונות אלא[1] שמלמד תנוקות יכול[2] לעכב[3] הספר שהוא לומד בו[4] ולא[5] שום דבר[6] אחר[7]

ב	א
7. מי[8] שהטילו עליו מתנה ובאו[9]	ושלוחי הקהל שגובי' המס [ובין
לגבותה[10] אינו[11] יכול להזמין הגובה[12]	ע"י ישראל] בין ע"י גוים או אותם
לב"ד עד שיפרע[13] מעות[14] או משכונו'	שהטילו המס אין יכול לכופם שירדו
ואחר כך[15] יכול להזמינו[16] לדין	עמו לב"ד עד שיפרע מעות או
ואפילו[17] קודם שיפרע[18] יש לו כח	משכונות אז יכול להזמין מי שעשה
לצעוק[19] עליו בלא ב"ד עד שיעשה[20]	לו שלא כדין או אפי' קודם שיפרע
לפי ראות הקהל[21] דאל"כ יקח[22] כל	אם נראה בעיניו שעושי' לו שלא כדין

1 א. ג. ד. ה. וב. וג. וה. וו. ח. זא. זב. רק מלמד [א. וג. וה. וו. ח. זא. זב. מלמדין] תנוקות. וד. רק המלמד.

2 א. וג. וה. וו. ח. זא. זב. יכולים.

3 וג. בשביל שכירותם. זא. זב. בשכירות.

4 וד. וה. וו. בשביל שכירותו כשעבר זמנו.

5 וב. וג. אבל בשאר תביעות הרי הן ככל אדם. וד. אבל שאר דברים הרי הוא כשאר כל אדם. וה. אבל שאר דברי הרי הוא ככל אדם.

6 ד. ולא אחר.

7 זב. כשעבר זמנו.

8 ג. ד. וא. וב. וג. וד. וה. וו. זא. זב. ש. ואיש. ה. ואדם. ח. איש.

9 זא. זב. ובא ישר'. וה. ובאו לגבותה ממנו.

10 ג. ד. ה. ח. ע"י הפקיד או השר. וא. וב. וג. וד. וה. וו. ש. ע"י עבד הפקיד. זא. זב. ע"י פקיד או מושל.

11 ג. אין לו להזמין. ד. אין לכוף ולא להזמין. ה. וא. וב. וד. וו. ש. אין לו כח. זא. זב. אי כח לנתבע. ח. אין לכוף (להזמין).

12 ג. ד. וא. וב. וה. זא. זב. המטיל לב"ד או המגבה. ה. הגובה לב"ד או המטיל. וג. וו. המטיל או המגבה. וה. המטיל על המגבה. ש. המטיל או המגבה לב"ד.

13 ה. וא. וב. וג. וד. וה. וו. ש. מה שהטילו עליו.

14 ה. וה. וו. במעות או במשכונות. וב. וג. וד. הן במעות הן במשכונות. ש. או במעות או במשכונות.

15 ג. וד. ה. וא. וב. וג. זא. זב. ואז. וד. אך. וה. ואחר שיפרע. א. ואין.

16 ג. ד. ה. להזמין [ג. לב"ד] מי שעשה לו שלא כדין. זא. זב. להזמין מי שעשה (זב. שעשה) שלא כדין וא. וד. וו. להזמין כל מה [וד. וו. מי] שיעשה לו שלא כדין [וא. כדין וכשורה]. וג. וה. [וג. מכל מה] שעשה לו שלא כדין [וג. וכשורה].

17 ד. לכן. וג. ואפילו... שיפרע ל'. וד. וה. שיפרע מתנתו.

18 ג. ד. ח. אם רואה שעושה לו שלא כדין וכשורה. ה. אם רואה אדם שהמטיל עושה לו שלא כדין וכשורה מן המתנה עצמה. וד. וד. אם רואה שהמטיל [וד. שהמטילו] עושה שלא כדין וכשורה מן המתנה עצמה. וג. או גבה יותר מן המתנה עצמה זא. זב. אם רואה שעשין לו שלא כדין.

19 ג. להיות קובל. ד. להיות צועק וקובל. ה. וב. וג. וד. וה. וו. ש. לבטל תפלה ולהיות קובל עליו. זא. זב. לבטל תפלה לקבל עליו.

20 וב. וג. וד. וה. ש. כדין וכשורה.

21 ג. ד. ה. ח. וא. וב. וד. זא. זב. עיני הקהל. וה. עיני הדיינים. ש. עיני טובי העיר.

22 ה. יקח הנדול. וה. יקח אדם כל אשר לחברו. ש. יכול ליקח השלו.

ב	א
אשר לו ע"י גוים[1] ויאמר שבשביל[2] המתנה הוא[3] לוקח.	יש כח בידו לצעוק ולקבול עד שיעשו לו דין ויתקן עיותו לפי ראות עיני הקהל שאל"כ יקחו ממנו הרבה ויאמרו בשביל המס לקחנו.
8. בני[4] הכפרים[5] הבאים[6] לקהלות ביום כפור ומביאין נרות[7] שקורין צירנש מניחין[8] אותם בבית הכנסת כי[9] יש חרם בדבר. ואם עושים שני נרות האחד יניחו בבי' הכנס' והאחד[10] בעירם במקום שמתפללין ביחיד.	ובני הכפרים שבאים למנין בקהלה יניחו נרותיהם של כפור בביהכ"נ כי חרם הוא.
9. וכל[11] נדרים שנודרין[12] בבי' הכנס'[13] ישלמו[14] באותה[15] העיר כמנהגם[16] וכתקנתם אם יש להן מנהג[17] קבוע[18]	

1 ונ. ע"י עבד הפקיד. זא. זב. ע"י גוים ל'. ה. וכל אשר לו יהיה בידי גוים.
2 נ. כי בעבור.
3 ד. לקחתיו וד. עושה כך. וה. אני לוקח. זא. זב. שהוא בשביל המתנה.
4 ג. ה. וא. וב. וה. וו. ואם אנשי הכפרים. ד. ח. זא. זב. אנשי הכפרים. וג. כל אנשי כפרים.
5 נ. ד. ה. וא. וב. שאין להם מניין בעירם זה. אשר אין להם מניין.
6 נ. ה. באים במקום קהלה. ד. ובאין במקום קהל. וא. וו. ובאין למקום קהלה למניין ביום הכפורים. וה. ובאים במקום קהלה להתפלל בו. זא. זב. ובאין למקום הקהלה למנין בי"כ [וא. בי"ט].
7 נ. נרותם שקורין צירייש. ד. נירותיהן. ה. נרות של שעוה שקורין צירייש שמדליקין ביום הכפורים. וא. נרות שקורין ציירנש. וב. וה. ומדליקין בבית הכנס' נרו' שקורי' צירנש. וג. זא. זב. ועושין נרות שקורין שרנש.
8 נ. יניחנו לבית הכנסת. ד. ח. צריך להניחם בבית הכנסת. ה. יניחו המותר באותו הכנסת שהיו נדלקין ביום הכפורים. וא. אם לא עשה כ"א אחד יניחנו בבית הכנסת שהדליקו שם. וה. אם יעשה איש נר אחד יניח אותו בב"ה שהדליקו. זא. זב. המותר יניחו בב"ה אם אין עושין אלא אחד.
9 ה. ח. זא. זב. כי.....בדבר ל'. וא. וב. וג. וה. וו. ויכולין בני העיר להכריחו בחרם להניחו [וא. שיניחנו שם].
10 נ. ד. ה. והאחד ידליק [ה. בעירו] במקום שמתפלל [ה. שם] ביחיד [ד. בעירו]. וא. והשני יכול לישא עמו להדליק למקום שיתפלל. וה. והאחר ישא עמו להדליק במקום שמתפלל שם. זא. זב. והשני ישא עמו וידליק [זב. וידליקנו] במקום שרגיל להתפלל. [עיי' למטה הוספה ד.] ח. ואם עושים...ביחיד ח'.
11 וד. כל הסעיף חסר.
12 א. נ. ד. ה. וא. וב. וג. וה. וו. שאדם נודר.
13 א. שיתפלל שם.
14 א. נ. ד. ה. וא. וב. וג. וה. וו. ישלם.
15 א. באותה ביהכ"נ. ה. באותה שנה.
16 א. כמנהג אנשי המקום. נ. וג. כמנהג אנשי העיר. ד. ה. זא. זב. כמה. נ. וכתקנתם ל'.
17 נ. ה. וא. וב. וג. וה. זא. מניין. ד. מנהג קבוע מניין קבוע.
18 ה. וגם נדרי ס"ת אם יש איש שיתבע אותם חייבים לשלם.

ב	א
10. [ומשנכנס1 אדר2 עד הפורים] העוברים3 דרך עיירות וכפרים4 אם יש שם מנין קבוע יש חרם קדמונית לתת5 מעות פורים6 לחלק7 לעניי אותה העיר8 אם יתבעם לו אחד מאנשי אותה העיר ואם9 לא יתבעו לו פטור מן החרם.	ובכל מקום שיש שם מנין קבוע העובר שם חייב לתן מעות פורים מר"ח אדר אם יתבעם איש מאנשי אותה העיר ואם לא יתבעו אותם אז הם פטורים מן החרם אם לא [נתנו].

11. אם יש בבית הכנסת מניין מצומצם10 אין אחד מהם רשאי לצאת11 משהתחיל12 שליח צבור להתפלל עד13 שיגמר תפלתו ואם14 התחיל15 קדיש16 או קדושה17 במניין18 יגמר אף בלא מניין19 ע"כ20 מכתב הר"ר משה מברנא

1 כ"ה בכל הנוסחאות חוץ מא' וב'.
2 ה. הסמוך לניסן.
3 ג. כל העובר.
4 דרך...כפרים] ד. בעיר שיש בה מנין קבוע. ה. תוך עיירות וכפרים אם יש לשם מנין קבוע קדמתים. וא. וב. וד. אם יש שם מניין קבוע. וג. וה. שיש שם מניין קבוע. ח. ממקום למקום על סוס.
5 ג. ד. ה. וג. וד. וה. וו. לפרוע. וא. לפרוע להם ולהיטיב להם כפלים ממה שהורגל ליתן בראשונה ויש חרם קדמונים לפרוע מעות פורים לחלק. וב. ישלמו.
6 ג. פורים ל'.
7 ה. לחלק לעניים. ה. לחלק לבני העיר.
8 ג. אם יתבעם לו אחד מאנשי העיר. ד. אם יתבעו לו אחד מן בני העיר. ה. אם ישאלם לו אחד מבני העיר. וג. ובלבד שיתבעם אחד מיושבי העיר.
9 ג. ואם הוא תובעם פטור מחרם. ה. ואם אין לו תובעים לא חלה עליו החרם. זא. זב. עיי' למטה הוספה ה.
10 ג. ה. וב. וג. וד. והתחיל החזן להתפלל. וא. והחזן התחיל להתפלל. וה. והתחיל אחד להתפלל. אא. והתחיל ש"ץ להתפלל.
11 ד. וא. וו. לבטל המניין. ת. לילך חוץ מבית הכנסת ולבטל המנין. וד. לבטל המנין ולצאת וה. לבטל.
12 ג. ד. ה. וא. וב. וג. וד. וה. וו. זא. זב. אא. משהתחיל...להתפלל ל'.
13 ג. ה. וד. וו. עד שיגמור החזן את תפלתו. וא. עד שיגמור הגאל. ד. עד שיסיים החזן את תפלתו אם התחיל עד שיגמור. וג. זא. זב. עד...תפלתו ל'. אא. תפלתו ל'.
14 ג. ד. ה. זא. ואם עבר ויצא. וג. וה. ואם עבר אחד מהם ויצא. וד. ואם עבר ויצא אחד מהם. זב. ואם עבר אחד מהם ויצא לא לצרכו אם אין צריך או עבור ממשלה. כ. ואם יצא אחד מהם בלא רשות.
15 ה. וו. אומ' ה"ר נסים כי מאחר שהתחיל. וד. וה. אטר רב נסים גאון שאפילו התחיל. וג. א"ר נסים שיגמור הכל הן קדיש הן קדושה.
16 ה. קדיש או ברכו.
17 ג. זב. מאחר שהתחיל. וג. מאחר שהתחיל במנין אע"פ שאין שם עכשיו מניין.
18 ד. יגמור החזן בלא מניין כיון שהתחיל.
19 אא. וכן נמצא בהלכות גדולות. ח. וכן נמצא בה"ג.
20 ג. עד כאן העתקתי מכתיבת יד החבר ר' משה מברינא. ר הנוסחאות ל'.

ואני יהוספיה בנימן או' דתוספתא היא אם[1] יצאו מקצתן יגמר ועל כולם הוא או' ועוהבי כו' (ישעיה א. כט).

12. נמצא[2] כתו'[3] שאין[4] לבטל תפלה בשבת וי"ט[5] אם לא בטל[6] ג' תפלות[7] ובשביל תקנת הקהל אף לכתחלה מותר[8].

הוספה א'.

בדפוס ה' נמצאת לפני הסעיף הראשון ההוספה הזאת: שלא למסור חברו ולא ממונו בידי גוים ושלא להביאו בערכאו' שלהן אפי' לעשו' שלום בין אדם לחברו אם אין לו הפס' גדו' [והפסד גדול].

הוספה ב'.

בכ"י וא' מוסיף אחר סעיף ג': ולא להשכיר בית שלא ברשות חבירו בזמן שהוא דר לשם ועוד אם היה חבירו מתרה שלא לדור בתוך הבית אלא לאחר שנה שיפטר מתוכה אל ידור ועוד יש מתקנת רבינו גרשום שלא יביא אדם שום דבר מע"ז בביתו ואיכא איסורא מן התורה שנא' ולא תחמוד כסף וזהב ולא תביא תועבה אל ביתיך (דברים ז. כה, כו.) ולא יקח בגד מלוכלך בדם או שום בגד מטובל במים ושלא יכה איש את חבירו.

הוספה ג'.

בדפוס וב: נגמר סעיף ו' בזה"ל: ובזה יש חרם קדמונים רק מלמד תנוקות יוכל לעכב ספר שלומד בו בשביל שכירותו ודוקא ספר שלומד בו

1 ה. וכל אלו היוצאין ועוהבין החזן בלא מנין עליהם הכתוב אומר ועוהבי ה' יכלו. זב. ואם עבר אחד מהם ויצא לא לצרכו אם אין צריך או עבור ממשלה הוא בכלל ועוהבי ה' יכלו ועבר על חרם של ר"ג וש"צ יסיים חפלתו ואמ' מורי שאף קדושה יגמור מאחר שהשלים ושהת ל טרם יציאה יגמור החזן בלא מנין [ובשאר נוסחאות חסר מן ואני יהוספיה עד סוף הסעיף].

2 ג. ועוד אמרי'. ה. ועוד אמרו. א. זא. זב. כל הסעיף חסר.

3 ג. כי יש חרם. וא. וב. וג. וד. וו. גם יש חרם קדמוני'. וה. גם יש תקנת קדמונית.

4 ג. ה. וא. וב. וג. וד. וה. שלא. אא. ח. אין אדם רשאי.

5 ג. בשום דבר. ה. מתביעה שאדם תובע לחברו. וא. וה. בשביל [וא. שום] תביעה שבין אדם לחבירו. וג. וה. וו. בשביל [וג. שום] תביעה שיש לאדם על חבירו.

6 ג. ה. וא. וב. וד. וה. כבר. אא. אא"כ בטל התפלה קודם לכן ג' פעמים. וג. על פי החרם קודם לכן ג' פעמים תפלה. א. אא"כ בטל ג' תפלות מקודם לכן.

7 ה. רצופות. וא. קודם לכן.

8 וא. וב. וג. וד. יכול לבטל. וה. יבטל אפילו לכתחלה. אא. אם...מותר ל'. וג. וה. [עיי' הוספה ו']. וו. הועתק מכתב אשר הועתק מכת' שהועתק מכת' רבינו משה מברנאה.

אבל בשאר דבר הרי הוא ככל אדם ור"ת הוסיף דאין לעכב ספרים שלומדים בהם ולא דבר אחר. ובכ"י וא' הנוסחא כן: גם אין לנפקד לעכב ספרים הנפקדים אצלו בשביל שום תביעה שבעולם שיש לו על המפקיד מפני דין חרם של עיקול שתקנו וגזרו הגאונים באלה ובנדוי ובשמתא על כל איש שישאל מאחרים הן ספרים הן מטלטלין ויש לו לשאל על המשאיל ועל זה תקנו רבותינו שאין יכול לעכבם בחובו הוא [צ"ל הואיל] ובתורת שאלה באו לידו ואומר ר"ת דאע"פ שאינו יכול לעכבם מכל מקום יכול לטעון עד כדי דמיהם מגו דאי בעי אמ' אינן בידי מידי דהוה אסכי' מנא דאשכבתא דסוף פרק המקבל [ב"מ קט"ז ע"א] דאמ' והא יכול לטעון כדי דמיהן מגו דאי בעי אמר להד"ם אע"פ שאינו יכול לעכבן משום דהוו להו דברים שעושין בהם אוכל נפש שאסור לעכבם כדאמרינן התם מיהו נראה שאם למשאיל עידי שאלה [צ"ל אין] יכול לטעון עד כדי דמיהן משום מגו דמנו במקום עדים לא אמרינן.

הוספה ד'.

ההוספה הזאת נמצאת בד' זא' ובכ"י זב' אחר סעיף ח': ונר כפור של נשים אין [זא. כח] ביד הקהל לכופן לתתו בבית הכנסת. ובכ"י וג' נמצאת ההוספה בנוסחא הזאת: ונר שעושין הנשים ביום כפור אין ביד הקהל לכופן לתתו בבית הכנסת כי ביד הנשים להצניען לשנה הבאה ולהוסיף עליו.

הוספה ה'.

בר' זא' ובכ"י זב' מצאתי הוספה זאת אחר סעיף י': פר"י מפלייזא [זב. מפר' מדנפיירא] שכל [זב. דבר] מאכל ומשתה שלוקחי' ישר' זה לזה [זב. אפי' שלא ברשות] משום שמחת פורים אין בו משום גזל וגנבה [זב. ובלבד שינידו לו אחר הפורים ואינו יכול להזמינו לדין] ובלבד שלא יעשה שלא כהוגן [זב. שלא לפי ראות טובי העיר.

הוספה ו'.

אחר סעיף י"ב נמצאת בכ"י וג' ההוספה הזאת: ושלא לבייש בעלי תשובה להזכיר סרחונם ופשעם ושלא לשכור בית שהשכיר גוי לישר' בלי רשות ישר' כל אותה שנה ושלא לגרש אשה בעל כרחה. ובכ"י וה' נמצאת ההוספה בנוסחא הזאת: ושלא יבייש אדם אנוס ובעל תשובה להזכיר לו פשעו בכל צד ושלא ישכור אדם בית גוי שישראל דר בו בלא רשות עד שנה תמימה.

TRANSLATION

1. If[1] a man passes through a community[2] where there is a *herem*[3] *beth din* and he is summoned to Court under the *herem*, in the presence of proper[4] witnesses, even if he be summoned in the market-place, the *herem* is upon him until he repairs to the Court to plead his case. Even if no witnesses are present, the *herem* applies, for witnesses, "are needed only as a protection against deceivers",[5] but a writ of insubordination[6] can be issued only on the testimony of witnesses. After having made his plea, the

[1] K inserts before this section an additional Takkanah against denouncing Jews. See Addition 1 (Hebrew text) and below p. 175.

[2] This section is quoted in Res. R. Moses Mintz, 83. It is no longer in its original form. A paranthetical remark declaring a summons valid if it delivered otherwise than in the presence of witnesses has been inserted. But the insertion must have taken place at a very early date since all our texts have it.

[3] For the institution of *Herem Beth Din* see Part I, p. 6. Our Takkanah attempted to insure for all the rights that under the *herem beth din* were guaranteed only for the citizens of each individual locality. It protected the interests of the defendant to the extent that he was merely obliged to come to Court and state his case. It would have been obviously unfair to compel him to await the decision of the Court. In later times the expression *Herem Beth Din* seems to have lost its meaning, since every community developed the authority of calling its citizens a court. As a result the later texts have various changes of readings, the most important of these being that of JA and JB, *Herem mi-Beth Din.*

[4] The word for "proper" has been omitted in all the later texts. Yet it must have been in the original Takkanah. Before the paranthetical statement declaring witnesses unnecessary for the validity of a summons was added, the opinion doubtless prevailed that the presence of witnesses was an essential factor in the summons. In that case it was necessary that the witnesses be such as according to Talmudic law are fit to testify. When the extension of the law was made, the word for "proper" was omitted. M still retains it, although the paranthetical statement has already been added.

[5] *Kiddushin* 65b.

[6] The writ of insubordination is called *Petiha* in the Talmud (*Baba Kamma*, 112a). Why the term is changed in our Takkanah is not clear.

defendant may proceed on his way. The plaintiff is responsible to see that the decree of the Court reaches him.[1]

M	S
2. If[2] a man summons his neighbor to Court and the	If[3] a man summons his neighbor to Court, and the latter

[1] For the sections that are inserted here in all the texts except S, see below, chapter II.

[2] M is here too more original, but a misunderstanding of the early text gave rise to the various differences which are found in the other versions. It will be noticed that the main differences between M and S, is that the latter contains an additional clause, differentiating in regard to communities having more than one synagogue, between the right to interrupt in the synagogue attended by the defendant and other synagogues. It will be noticed too on examination of the variants that while S speaks of two synagogues, the other texts speak of two or more. Moreover the other texts read "He (the plaintiff) may not interrupt the morning (*Yozer*) or afternoon service unless he has three times interrupted the services." This meaningless clause, has usually been explained to mean "unless he has three times interrupted the *evening* service." So Bloch emends the text in his edition of RMP. So was it changed by the writer of S.

The matter becomes entirely clear when we bear in mind the custom regarding interruption of prayers which was prevalent in Germany. Full interruption of the prayers consisted of arising immediately after the prayer of *Yishtabah* and preventing the reading of the *Yozer*, the benediction of the *Shema*. This is evident from *Rabiah*, *Berakot* 32. A manuscript *Sefer Minhagim* in the library of the Jewish Theological Seminary (now being published by my friend, Dr. Israel Elfenbein,) fol. 63a, contains the following statement:

מנהג בכל הקהלות כשאדם קורא חברו לדין ולמושב [א"צל ולהושב] החזן על ככה שאינו יכול להושיב החזן בברכו לבטל תפלת יוצר וערבית ולא יבטל תפלת מנחה עד שביטל כבר נ' פעמי' בבקר באשרי ובערבית בין מנח' למעריב ואם אז אינו עונה לו יכול לבטל התפלה עד שיעשו לו דין

"It is the custom in all the communities that when a man summons his neighbor to court (and desires to) cause the *hazzan* to be seated, i.e., interrupt the prayers, on that account, he may not cause the *hazzan* to be seated at *Barku*, thus preventing the recital of the *Yozer* (the morning benediction of the *Shema*) or *Arbit* (the corresponding evening benediction) nor may he interfere with the recitation of *Minhah*, the Afternoon Prayer, unless he has thrice interrupted the prayers either in the morning at *Ashre* (that is before the prayer ובא לציון) or between the afternoon prayers and the evening prayers. If the defendant then refuses to answer, he may cause the prayers to be stopped until they do him justice."

The interruption of the prayer "between the afternoon and the evening prayers" can refer to no stoppage of the recitation of prayer

latter refuses to appear, the plaintiff may not stop the morning (Yozer) or afternoon service until he has interrupted their *completion* thrice. After that he may stop them entirely.

refuses to appear, the plaintiff may not stop the morning (Yozer) or afternoon prayers or the reading of the Torah[1] unless he has thrice interfered with the *evening* service or the completion of the morning service. After that he may stop all services until his case is tried. If there are two synagogues in the city he may only interrupt the prayers in the synagogue which the defendant attends[2] But if he has interrupted the prayers there thrice (without avail) he may stop the services in both synagogues.

but only, apparently to the gathering of the people and making public protest against injustice.

The passage cited shows that the interruption of the prayers always took place before the beginning of the *Yozer* or the benedictions of the *Shema*. This was in fact the beginning of the public prayers. The Takkanah now provided that before interfering with the recitation of the *Yozer* the complainant would have to give notice of his complaint by preventing the reading of ובא לציון three times.

It is only on the basis of the assumption that it was the German custom to interrupt the prayers at the end, that we can understand section 14 of the Takkanot Shum (below p. 228). That passage was misunderstood by Guedemann (I.280) but correctly interpreted by Rosenthal (MGWJ 46.255). After failing to arouse public opinion by three interruptions of the prayers, the complainant would forbid the holding of any services until justice was done him. This was called "closing the synagogue."

[1] In later times it became more customary to disturb the Reading of the Torah than the prayers, see *Takkanot Shum*, 14

[2] The expressions used in the various texts have a distinct significance. In S we read that one may interrupt the prayers for the first three times only in the synagogue where "the defendant comes to pray". That does not imply that that person is in the synagogue at the time of the complaint. In H and P it is expressly stated that the defendant must be present. The very fact that there is no agree-

"3. If[1] one lends a (house for use as a) synagogue to a community and a difference arises between him and one of the other members of the community he may not forbid its use to any individual unless he forbids it to all the other members of the community.

4. If[2] a person has lost an article he has the right to interrupt the prayers until the community pronounce a

ment as to what precisely is the requirement, shows that it was not part of the original compilation and that therefore each later writer felt at liberty to change it. That tends to confirm the theory expounded in note 2, page 128.

[1] This ordinance is quoted in *Orhot Hayyim* (laws of the Synagogue 26, and thence by R. Joseph in *Shearit Joseph* 29, 69) and by R. Meir Katzenellenbogen in a responsum (85). On the other hand the author of the *Or Zarua* in discussing the rights of the owner of a synagogue against those to whom he loaned it, makes no mention of our ordinance (*Or Zarua Baba Mezia*, 21).

[2] This Takkanah is mentioned by R. Joseph Colon in a responsum (110). He ascribes it to R. Gershom. The custom is mentioned by R. Eliezer b. Nathan (*Raben*, ed. Prague 93c, RMP 770) but he speaks of no ordinance on the subject. In *Maharil* (Customs of Penitential Days, ed. Cremona 56b) mention is made of one who pronounced a *herem* during the penitential season in order to have his lost articles returned by the finder. R. Jacob Molin was angered, it is said, because the person had so little thought of the sanctity of the period as to be concerned about a mere monetary matter. He objected too, to the pronunciation of a *herem* during those days since it partook of the character of an oath.

While the ordinance before us guaranteed to the members of the communities the right of pronouncing a *herem* compelling those who might find strayed property to return it, the custom itself was older than the ordinance of R. Gershom. In one of his responsa R. Gershom himself discusses the rights of the "communities" to compel the finders of articles to return them, although under the letter of Talmudic law they might be excused. (RFL 94 and *Hayye Olam* ed. Goldberg et Adelman p. 29). Nor was this custom limited to France and Germany. A question addressed to R. Solomon ibn Adret shows that the custom prevailed at least in some Spanish communities (Res. Ibn Adret, 4, 104).

In another form, however, the custom was even more widespread. We hear very often of a *herem* similar to that contemplated in the Takkanah before us, being announced to compel witnesses to come and testify. Professor Ginzberg calls my attention to a reference to such a custom in so old a source as *Vayikra Rabba*, chapter 6. (See his *Unbe-*

herem compelling anyone having information about the lost article to inform him. None may refuse to submit to the *herem* under the plea that he is ready to be tried in Court.[1] So is the law stated in the Book of Barzilai,[2] in the res-

kannte Juedische Sekte pp. 171–2). In that case there is no mention of any *herem*; the *hazzan* merely announces that all who know anything about a certain theft are required to come forth and testify. In a question addressed to Rashi mention is made of the pronouncement of a formal *herem* in such a case (RFL 29). We read of such a provision in *Raben* (Prague 59d) and elsewhere (RMP 319, RMB p. 31, *et al.*) It is clear that this was a revised form of the ancient *Shebuot Ha-Edut*, (Lev. chapter 5, and M. *Shebuot*, chapter 4). Instead of demanding that each individual swear that he had not heard about the litigation or the stolen or lost article, the custom naturally developed of taking the whole Congregation under oath by means of a *herem*. Thefts and losses being the most common matters about which one needs witnesses and yet does not know where to seek them, they are most commonly mentioned. But we hear on one occasion of a custom to clear titles to property by means of such a *herem*. In some communities no one could sell landed property without a *herem* being pronounced asking all those who knew of any flaw in the title to reveal it to the Elders of the Community or to the buyer (RMC 262).

That this *herem* to compel people to testify is akin to the ancient Witnesses's Oath, can be seen from the fact that other oaths underwent similar development. Thus we read in a responsum of R. Hai in *Shaare Zedek* (483) that if one has general suspicion against a person but not sufficient evidence to compel him to take an oath, one may announce a *herem* against the whole Congregation including that man. (Comp. also *Teshubot Ha-Geonim* Lyck 22, *Mordecai Shebuot* 706, *Raben Sanhedrin* 24). The close correspondence between these two customs was seen by the compiler of M who refers to the quotation from R. Judah Barceloni, given in the text of several of the sources.

[1] The expression ירד לדין which is here used is the one ordinarily employed in German texts, or rather those of the Rhine country, for going to Court in a litigation. It corresponds of course to the Talmudic expression נחית לדינא (Compare חותו לדינא, *Shebuot*, 30a.) The ordinary expression in Hebrew for going to war is ירד למלחמה and perhaps the conception of a litigation as a contest led to the coining of the phrase.

[2] The work referred to is doubtless the code of R. Judah Barceloni. It is expressly mentioned in one of the variants. (See also Halberstam's introduction to R. Judah Barceloni's Commentary on the *Sefer Yezirah*).

ponsa and ordinances of the Geonim. "No[1] defendant can be compelled to take an oath regarding a claim in which the plaintiff is not positive. Yet one may declare a *herem* binding the community, including the suspect to confess the truth. No one may prevent the pronunciation of such a *herem*. The words of the Geonim, remarks Barzeloni, should be observed and one may bind a community by a *herem* provided no one is mentioned by name."

M

5. If[2] the *Kahal*[3] has established an ordinance to help the poor[4] or for any other purpose with the agreement of the majority, the minority may not refuse to obey it saying, "Let us go to Court to discuss the matter", for everything depends on the opinion of the Elders[5] of the City, according to the ancient custom or the needs of the hour.

S

If the members of a Community are establishing an ordinance to help the poor or for any other purpose and most of those worthy to decide have agreed to it, the others may not ignore the ordinance, and claim that they wish to discuss it in Court, for no Court may sit in such a case, since everything depends on the opinion of the Elders of the City for such is the custom of the ancients.

[1] The quotation is found only in M and PB. A custom similar to the one mentioned is recorded in *Shaare Zedek*, p. 83, *Teshubot Ha-Geonim*, ed. Lyck, 22, and *Mordecai Shebuot* 706. I have not, however, been able to locate the quotation.

[2] This ordinance is quoted by R. Meir b. Baruch. See RMB p. 209.

[3] M must have been the original form of the ordinance. As it stands in most of the texts it is full of obvious self-contradictions. The expression "and they are among the worthy ones" is a paranthetical one inserted quite peculiarly in the midst of a sentence. It is evidently a later addition.

[4] The reason for specifying the helping of the poor is not clear. It is possible that originally that ordinance dealt only with the question of raising money for charity, and that later scribes added "or other Takkanot".

[5] It is clear that the expression "the members of a community make a Takkanah" does not mean that the Takkanah was put to

6. If[1] one has left books with his neighbor for safe-keeping the trustee may not retain them because of any claim that he may have against the owner. In regard

vote, for that is denied by the expression "the majority *agree*". It would be most unnatural to express in this form the thought that a resolution had been passed by the majority. It seems to me that "the people of the city" refers to a council; perhaps the council of seven. Perhaps we should read טובי העיר as the Council is usually called. If we assume that to be the meaning, the ordinance becomes very lucid. "If the council proposes a Takkanah, for the sake of the poor or otherwise, and the majority of the community agree to it, but a minority object, then the minority cannot set aside the Takkanah, saying we will come to Court against you. For no court can sit in such a matter. It all depends upon the will of the best men of the city (provided of course the majority agree)". See Part I. p. 51 for the various conceptions of the rights of the community.

[1] The difficulties in regard to this section are numerous. First, it is the only section in which there occurs the name of an authority Secondly, the authority mentioned is R. Tam, who was born about the year 1100, more than half a century after the death of R. Gershom. If we assume that it is of later origin, there are other difficulties to trouble us. We find R. Samson of Sens (d. c. 1215) deciding a case in which the principle of this ordinance was involved making no mention of either R. Gershom or R. Tam. A and B, two brothers, owned some books in common. One of the books was used as a text book by the son of B. Later A and B divided their property and the book which was being used by B's son fell to the lot of A. For a time A did not object his nephew using his book. But soon he began to insist that the book be returned. The young man claimed that A owed him some money and that he would keep the book until the debt was paid. R. Samson says in his responsum: "It is true that there is an ancient *herem* against retaining because of a claim anything which came to one's hands as a loan or as a pledge" (RMP 479, Res. Maim. *Mishpatim* 21). Now R. Samson does not distinguish between books and other property in the matter of retaining. He thinks that there is an ancient *herem* in regard to any retention of pledges. But he could hardly have referred to a Takkanah of R. Tam as an ancient *herem*, since the years of R. Tam's greatest activity coincide with R. Samson's student days. Moreover, it is most probable that if he had known of the Takkanah from our compilation he would have made mention of R. Gershom or R. Tam.

But the matter is even more confused. We have a decision of R. Tam, himself, in a case similar to the one described referring to the ordinance as an ancient enactment. In that case two men had gone into

to this is there an ancient *herem*, but R. Tam added that no article left in trust may be retained except that a teacher may retain the book in which the pupil has studied but nothing else.

business together. The one had supplied the capital, and the other was to manage the business. The profits were to be divided equally. Jewish law looks upon the manager in such a case as bailee in regard to the half of the funds, the profits of which belong to the investor. He is a borrower in regard to half of the funds, since the returns on it belong to him. (*Baba Mezia* 104b). In the case before R. Tam, the active partner, pleading certain claims against the owner of the capital, refused to return the invested money. A local court had decided that the seizure of the bailments had been illegal and that the manager would have to make restitution and then sue for his claims in the ordinary way. On appeal, R. Tam sustained the decision of the local court, explaining that there is "an ancient *herem*" against retaining bailments for any cause. (RMP 335, RMB p. 2, Res. Maim. *Mishpatim* 1, *Mordecai, Baba Mezia* (9, 404). It is clear then that R. Tam could not have originated the extension of the *herem* to other things than books for he would certainly not mention an ordinance of his own as an "ancient ordinance". It is singular, too, that while he speaks of the Takkanah as ancient, he does not ascribe it to R. Gershom.

R. Eliezer b. Joel Ha-Levi, a younger contemporary of R. Samson of Sens, gives us some clarifying facts. He tells us that in his day there were different customs in regard to retention of bailments. "There are places in our country", he writes in Germany, "where the custom prevails not to retain any books which have been loaned as security for debt. But there are places where that custom holds only in regard to teachers of children where the teacher may retain the book only in order to obtain due payment." (RMB p. 1, 3 and see RMP 576, 663). In France we have seen that everything was held to fall under the scope of the ordinance.

This then is what seems to have happened. There was an ancient German *herem* against retaining books. There was a similar French custom which protected all bailments. It is the German custom which is referred to in our text as the "custom of the ancients". R. Tam merely extended the custom of France to all the communities. The original Takkanah with the change introduced by R. Tam, was still further amended by a later scholar who wanted to include his local custom, limiting the prohibition to teachers and permitting even for them the seizing of text books only in order to insure payment of tuition fees. The whole was then added to the Takkanot of R. Gershom, to which they do not belong at all. For this code deals almost entirely with communal matters, and this is a matter between individuals.

M

7. If[1] a contribution has been assessed against a person he may not summon the collector to Court until he has paid the tax either in cash or given a pledge for its value. After that he may summon the collector to Court. Even before he pays he may make complaint without appearing in Court until the collector does what seems right to the community. Otherwise a ruthless man might deprive a member of the community of his property and declare that he is collecting it as a tax.[2]

S

The agents of a Community who are collecting a tax, whether with the help of Jews or Gentiles, and the assessors, cannot be summoned to Court until the tax has been paid in cash or pledges. After the tax has been paid suit may be brought against anyone who acted illegally. Even before payment is made, however, if one feels that his rights are being violated he may make complaint until justice is done him, and the wrong righted in accordance with the view of the Elders of the Community. Otherwise the collector might use the tax as a pretext to take from him an exorbitant sum.

[1] The custom described in this ordinance is well established. See RMP 708, RMB 414, RMC 49, RMR 371, HOS 275. The section is quoted in the responsa of R. Joseph Colon (17) as an ordinance of R. Gershom.

[2] There is good reason for believing that even M represents an outgrowth from an older text. First as M stands before us it contradicts itself. It begins by saying that one cannot cite the collector or assessor to Court, and ends by permitting one to complain "without calling a Court". It is clear that the "complaining" is only an evasion, for surely it would require a Court to decide what was fair taxation and to state "what seems best to the Community". Some of the texts, (L, P etc.) try to avoid the difficulty by assuming that one may complain only when "the gift (contributed) itself" is wrongly assessed against one. But those are obviously mere attempts to rectify a difficult text. It is evident that originally there was no provision for "complaining without a Court". Moreover, the various texts are so confused about the "assessors" and the "collectors" that it is clear that there has been some juggling with them also. There can be no

8. Villagers[1] who come to the large communities on Yom Kippur and bring their candles, called *cierges*, must place them in the synagogue for there is a *herem* concerning the matter. If they have two candles, they must place one in the synagogue, and the other may be placed in their own locality where they pray privately.

Villagers[2 3] who come to a larger community for prayers must place their Yom Kippur candles in the synagogue for such is a *herem*.

doubt that originally attention was paid only to the assessors. If they found difficulty in having the assessment paid, they would appeal to the Gentiles for help. The later compiler or copyist could not understand why any attempt should be made to restrain the assessor when it was really the one who was collecting through Gentile powers that was at fault and so he added also the "collector".

That there was no provision originally for special cases is evident from the *Takkanot Shum* (9), where the Three Communities adopted this in principle as a local Takkanah. There is no mention there of any "complaining without a court". R. Meir b. Baruch, who appears to have had only the first five sections of the compilation before him, knows the principle involved in this Takkanah as an ordinance of the "ancients" (see references in previous note), but he, too, does not know of any right to complain in the synagogue in such a case before paying the assessment in money or securities.

[1] In the case of this section we are more fortunate, as the original text is retained in one of the recensions (S). The simple rule is there laid down that villagers coming to larger cities for public worship on the High Holidays, must set their Yom Kippur candles in the synagogue in which they pray on Yom Kippur rather than in their homes. The word יניח here has the same sense as in the phrase הנחה עושה מצוה (B. Sabbath 22b). When the Takkanah spread the custom developed of having two candles, the one for the synagogue in which one prayed on Yom Kippur, the other for one's local place of prayer. The writer of K misunderstood the word יניח, and took it to mean "leave". He added, in order to be more explicit, "he shall leave what remains of the candle". The later writers strayed still farther from the original by inserting, "and the second he shall bear with him to the place where he prays regularly". The original custom was doubtless to kindle the second candle in the village place of worship for the Day of Atonement; the writers, however, thought that both candles were brought to

9. All[1] vows which are taken in the synagogue must be paid in that city in accordance with the custom of the city[2] and its ordinances, if it has an established custom.

10. From[3] the beginning of Adar till Purim, those who pass through cities and villages in which permanent are obliged by an ancient *herem* to pay the Purim tax for the benefit of the poor[4] of the locality services are held. If no one requests payment of the tax, the traveler is free from the *herem*.[5]

Anyone passing through a locality in which regular services are held, after the beginning of Adar is obliged to pay the Purim tax if a demand for payment is made. If no request for payment is made the *herem* does not apply.

11. If[6] there are only ten men in the synagogue, none of them is permitted to leave until the *hazzan* has completed

the City Synagogue, and that after the fast was over, the villagers left the remnant of the one candle in that synagogue. The remnant of the second he might take with him to his home place of service.

In later times the custom of leaving the remnants of the candles in the Synagogue does not seem to have been prevalent. It is told both of Maharil (*Minhagim*, Cremona 69a) and of R. Israel Isserlein *Leket Yosher* p. 142) that they took remains of the candle to their homes in order to pronounce the *Habdalah* over them.

[1] This section is omitted from P. It has come down substantially in its original form in all the other recensions.

[2] K fixes the term of payment at one year. Paying a vow within a year is required by Talmudic law (*Rosh Ha-Shanah* 4b).

[3] In *Tashbez* (173) we read that in a place which has no permanent *minyan* one may retain the Purim tax to give it to a community where there is such a minyan.

[4] In the well-known responsum of R. Eliezer b. Isaac of Bohemia to R. Judah the Pious, RMR 112, mention is made of the custom of using the Purim tax to support the *hazzan* of the synagogue. It is not likely that the custom in this regard was uniform. Probably our ordinance contemplates gifts to the poor.

[5] This custom must have been widespread since we find a Middle Age parody to this Takkanah. See Davidson, "Parody in Jewish Literature", p. 136, no. 14.

[6] This section also occurs as the first section of the secondary recension of the Takkanot ascribed to R. Tam, see below p. 192.

his prayers. If, however, the *hazzan* has begun the recital of *Kaddish* or *Kedushah* in the presence of a quorum (ten persons), he may complete it even if one has left. Thus far have I copied from the Manuscript of R. Moses of Verona[1], but I, Jehosifiah Benjamin,[2] claim that the law is found in the *Tosefta*,[3] which reads: "If some of the men present have left, he may complete the service, but to all such as leave the services under such circumstances, we apply the verse: And they that forsake the Lord shall be consumed."[4]

12. It is written that it is forbidden to disturb the prayers on Sabbaths or Festivals unless the complainant has attempted to interrupt them three times during the week days without success. In case of matters of public concern, the prayers may be interrupted even on such days.

[1] See Berliner, in *Hebraeische Bibliographie*, XII. 39, and Gross, *Gallia Judaica*, p. 129. both of whom transliterate "Verona," but compare Lauer in J. J. L. G. XII, p. 19, who proves that Verona would be written ורונא.

[2] The writer of the Munich Talmud Ms.

[3] I have been unable to find the statement in the *Tosefta*, but it is found in Jer. *Megillah* 4.4. In some of the later texts it is quoted in the name of R. Nissim. The earliest text mentioning him is K. We know from the *Shibbale Ha-Leket* (ed. Buber, p. 10) and from RMP 766 that it is taken from *Megillat Setarim* of R. Nissim.

[4] Isaiah I.23.

CHAPTER II

REGULATIONS CONCERNING THE SUSPENSION OF THE HEREM AGAINST PLURAL MARRIAGES AND SIMILAR REGULATIONS.

The following regulations occur as has been stated in chapter I, p. 112, in every text of TRG except S. The variants are therefore here given under the same notation as is used in regard to that text. In addition to those texts use has also been made of AA (Hebrew אא), which is an old German recension of these regulations found in RMP 1022. AA, M, and K, have been printed below in parallel columns. AA and M are printed in full since they are the oldest representatives of the German and French texts respectively, while K presents several interesting variants which made it advisable to give it completely. The variants from E and C are attached to AA, which they resemble most; those from JA, JB and V to M, to which they are most nearly akin; and the rest are given as variants to K, because while the development of K has in the case of these regulations somewhat obscured its relationship to the group P-PB-PC-PF-H-L, it is certain that they are akin to it.

TEXT

אא

1. חרם תקנת1 הקהלות ששם רבינו גרשם מאור2 הגולה דאין3 לישא שתי נשים אין להתירה רק במאה אנשים מג'4 ארצות

1 ד. תקנת הקהלות ל'.
2 ד. ח. מאור הגולה ל'.
3 ד. ח. שלא.
4 ד. מג' קהלות מג' ארצות כגון אנויאב ופוייטו ונורמנדיא. ח. מג' קהלות מג' מדינות כגון יושבי פויטוב וצרפ'ונורמנדיאה.

ב

החרם שהחרים1 רבינו גרשם שלא לישא2 שתי נשים אין להתירה רק במאה אנשים משלש3 מדינות כגון אניו4 נורי

1 ג. ששם רבינו. זא. זב. אשר שם.
2 זב. שלא לשאת.
3 ג. זא. זב. משלש קהלות משלש ארצות.
4 זא. ספרד ערמייא צרפת זב. ספרד טרמדניא צרפת.

ה

והחרם1 ששם רבינו גרשון שלא2 לישא שתי3

1 וא. החרם אשר שם. וב. והחרם תקנת הקהלות אשר שם רבינו גרשם.
וג. השניה רבינו גרשם שם חרם.
וד. וה. והחרם אשר שם רבינו גרשם.
2 וב. וד. שלא ישא איש. וג. שלא לקדש. וה. שלא ישא ל'.
3 וה. משתי.

א	ב	ה
ומג' קהלות וגם אותם לא יסכימו עד שיראו טעם מבורר להתיר וצריך שתהא כתובתה[5] צרורה ומונחת ביד נאמן במעות[6] או במשכונות.	מנדיאה וצרפת וגם אותם[5] לא יסכימו אם[6] לא יראו טעם[7] מבואר להתיר ושתהא כתובתה צרורה ומונחת ביד נאמן במעות או במשכונות.	נשים[4] אין להתירו רק במאה[5] אנשים[6] מג' קהלו' ומג' ארצות כגון ארגון[8] לומברדיאה צרפת גם הם[9] לא יסכימו[10] עד[11] שיראו טעם מבורר להתיר גם באותו ענין שתהא[12] מבורר [ותהא כתובתה צרורה ומונחת ביד נאמן במשכונות או במעות].[13]
2. וחרם שמקבל[7] החתן[8] עליו נ"כ[9] צריך	3. והחרם[8] שמקבלין בני אדם[9] עליהן התרה[9]	2. אבל[14] חרם תקנת

5 ד. הכתובה. ח. ושתהיה כתובתה.

6 ד. במשכונות או במעות. ח. בכעות מנויות או במשכונות.

7 ד. ח. שמקבלי'.

8 החתן עליו] ד. ח. החתן והכלה.

9 ד. נ"כ ל'.

5 זא. זב. הם.

6 אם... יראו] ג. עד אשר יראו. זא. זב. עד שיראו.

7 זא. זב. טעם טוב בדבר ודין זה למגרש אשה שלא מדעתה.

8 זא. זב. חרם הקהלות.

9 ג. איש ואשה. זא. זב. חתן וכלה לאחר תשומת יד.

10 ג. זא. זב. צריך כמו כן מאה [זא. אנשים. זב. איש] להתיר.

4 וג. ביחד.

5 וא. ביחד.

6 וב. בני אדם. וג. איש.

7 מג'.. .ארצות] וב. מג' ארצות מג' קהלות. וג. וה. וו. מג' קהלות ל'. וד. מג' מלכיות.

8 וא. אניובא וטרמנדיא וצרפת. וב. אנגר וצרפת לומברדיאה. וג. צרפת נור' מרדיאה ופוייטו. וד. אוניואה ונומברדיאה וצרפת. וה. אינ' גוב פיינאב ונוראדיאה. וו. אנדא טארמנדיא וצרפת.

9 וא. וב. וג. וו. אותם. וד. הם ל'. וה. אותם מאה בחרם שלא יסכימו להתירה.

10 וד. יתירו אותו.

11 וה. אם לא יראו טעם בדבר.

12 וא. וג. וד. וו. שתהא כתובתה צרורה ומונחת ביד נאמן במעות או במשכונות וב. שתהיה כתובתה מונחת ביד בית דין או במשכונות או במעות. וה. שתהא הכתובה מונחת וצרורה ביד נאמן במעות או במשכונות

13 וב. והחרם שמקבל עליו החתן גם כן צריך מאה להתירה ואין צריך מג' ארצות.

14 וא. וב. וג. וד. וו. וה. והחרם שמקבלים האיש והאשה לאחר [וג. ל'. וה. לשום] תשומת.

אא

מאה להתיר וא"צ[10] שיהיו מג' ארצות.

3. והרם קדמוני'[11] על תשומת יד בלא קבלת חרם[12] לקיים התשומת יד אך יש להתיר בשלשים[13] וכולם[14] צריך טעם מבורר[15] להתיר.[16]

ב

במאה ואין[10] צריך מג' מדינות.

2. תשומת יד בלא קבלת חרם יש חרם קדמונית לקיים התשומת יד והתרה[12] בשלשים[13] וכולן[14] עד שיראו טעם מבואר להתיר.

ה

הקהלות[15] משדוכין[16] אין צריך[17] מג' ארצות.

3. ותשומת יד בלא קבלת חרם יש חרם קדמוני'[18] לקיים[19] התשומת יד אך[20] יש להתירה בשלשים ובכלן[21] אין רשאין להתיר עד שיראו טעם מבורר (ותהא כתובתה צרורה ומונחת ביד נאמן במשכונות או במעות)

4. והחרם[22] שמקבל איש כמו כן מאה אנשים להתירה אך אין צריך מג' ארצות.

10 ד. אבל אין צריך.
11 ד. וחרם קדמוני' ל'.
12 ד. יש חרם קדמוניות.
13 ח. בג'.
14 ד. ומכל מקום.
15 ד. מבואר.
16 ד. ל'.

11 ג. אבל אין. זא. זב. אבל לא.
12 ג. זא. זב. אך יש להתיר.
13 זא. זב. בג' אנשים.
14 זא. ובכולן אין רשאי להתיר עד שיראו טעם להתירן. זב. וכולן אם יראו טעם להתיר

15 וא. צריך להתירה במאה וב. וד. וו. צריך כמו כן מאה להתיר. וג. כמו כן אין להתיר אלא בשלשים איש. וה. כמו כן אי' להתירה כ"א בק' אנשים.
16 וא. וב. וד. וו. אבל. וג. אכן. וה. אך.
17 וב. וה. שיהיו.
18 וא. וב. וד. קדמונים. וג. וה. קדמונית.
19 וא. לכל. וב. לקבל.
20 וה. אך להתירה בשלשים רשאי.
21 וג. ואין להתירה בלא טעם מבורר. וה. ואינם יכולים להתיר עד שיראו טעם בדבר.
22 [סעיף ד' ל' בשאר נוסחאות ועין למעלה הגהה י"ג].

TRANSLATION

AA	M	K
1. The[1] *herem* of the ordinance of the communities established by R. Gershom *Me-or Ha-Golah*[2] against	1. The *herem* declared by R. Gershom against marrying two wives may not be suspended ex-	1. The *herem* declared by R. Gershom against marrying two wives may not be suspended ex-

[1] This text is not properly an ordinance at all. It is a statement of the conditions necessary to suspend the operation of the *herem* of R. Gershom against plural marriage. Gross in *Gallia Judaica* (p. 237) imagines that it is an amendment of R. Tam's to the famous Takkanah of his predecessor. But that view is untenable. We shall see (p. 145) that the latter parts of this text were unknown to R. Yehiel of Paris. While it is true that the first section may be, and probably is, earlier than the second and the third, we have no reason for assuming that it is the work of R. Tam. Gross's opinion is very likely based on the ascription of TRG in one text to R. Tam (See RMP 153). But we have seen that this section was only in later times added to TRG, and that the ascription of that text to R. Tam is erroneous.

[2] It is generally recognized that the *herem* against polygamy was promulgated by R. Gershom. R. Meir of Padua, however, believed that it was the work of R. Samson b. Abraham of Sens (France about 1200). In a responsum (13) R. Meir quotes R. Joseph ibn Habib as saying, "although R. Samson of blessed memory instituted a *herem* in the presence of many scholars, that one may not commit bigamy, in a case such as this (where there are no children by the first wife) the Rabbis did not institute the ordinance. This is the opinion of the French scholars as quoted in a responsum of R. Solomon ibn Adret." This quite astonishing news which is unsupported by any other evidence, we are at first tempted to ascribe to a copyist's blunder since three of the letters of גרשון and שמשון are identical (*Gershom* often being written *Gershon*). But that the error, if it be one, is really R. Meir's is evident from the statement made somewhat later, that "it is possible that the author, (R. Joseph ibn Habib), makes a distinction between the ordinances of R. Gershom and R. Samson." It is clear, therefore, that R. Meir actually believed that R. Samson had made a Takkanah which differed in some respects from that of R. Gershom.

At first sight the matter gains plausibility because of the statement of R. Solomon ibn Adret that the Takkanah of R. Gershom lapsed automatically with the year 5000 A.M. (1240 C.E). It would be natural, if that be true, for R. Samson, who lived a little before the time of the expiration of the Takkanah to have renewed it, perhaps with amendments. Unfortunately the statement of R. Solomon ibn Adret regard-

AA	M	K
marrying two wives may not be suspended except by one hundred men from *three countries and from three communities*[1]. These men shall not agree to suspend the *herem* unless a cogent reason is given for the request and unless the payment of the *Ketubah* is assured either by cash or other guarantee.	cept by one hundred men *from three provinces like Anjou, Normandy, and Isle de France.* These men shall not agree to suspend the *herem* unless a cogent reason is given for the request and unless the payment of the *Ketubah* is assured either by cash or other guarantee.	cept by one hundred men from *three communities and from three countries, like Aragon, Lombardy and France.* These men shall not agree to suspend the *herem* unless a cogent reason is given for the request, (and unless the payment of the *Ketubah* is assured either by cash or other guarantee).

ing the temporary character of the Takkanah of the Light of the Dispersion, is itself in need of verification.

Ibn Adret's statement is not found in his published responsa, but is quoted by R. Joseph Colon (Res. 101). But according to that citation Ibn Adret's authority was very indefinite. He was unable, apparently to name the source of his information, and said, "I heard it in the name of the French scholars." Had the information which reached Ibn Adret had a true basis, how could we explain the fact that in all the French and German discussions of the Ordinance of R. Gershom, there never occurs any reference to this time limit. Is it conceivable that so important a matter would be overlooked by the many scholars who deal with subject? One is forced to the conviction that Ibn Adret's authority was inaccurate.

If we abandon the theory that the ordinance of R. Gershom lapsed in 1240, we cannot understand why any renewal of it should have been necessary. It was observed by all and it would have appeared unnecessary for a scholar of the twelfth or thirteenth century to renew the ordinances of R. Gershom. (See *Takkanot Shum* Text M, end, below, p. 23). We must therefore assume that the statement of Takkanah is based on a misreading of the *Nimmuke Joseph.* This belief is corroborated by the fact that our editions of the *Nimmuke Joseph* have *R. Gershom* where R. Meir reads *R. Samson.* (See *Nimmuke Joseph, Yebamot* 39b) We must therefore come to the conclusion that R. Samson had nothing whatever to do with the Takkanah, neither amending nor renewing it.

[1] Rosenthal (*Hildesheimer Festschrift* p. 40ff) accepts the reading

"of three countries, of three communities" as more original. He believes that originally the Takkanah was made by R. Gershom for the three communities of Speyer, Worms and Mayence. It should be suspended therefore only by the consent of representatives of these communities. When the Takkanah was extended to all of Germany and France. the requirement was made to have 100 men from three provinces. The words, "of three provinces" were then inserted, and the original reading kept as well. So runs the argument. It is not, however, acceptable (see also above, p. 24). If the Takkanah had been established only for the three communities, it would doubtless have been liable to abrogation by the representatives of the three communities, just as writs of divorce could be granted by representatives of the three communities, properly elected, without requiring 100 men, selected without any regard to station. Moreover, it is scarcely credible that a Takkanah intended only for the three communities should have gained such wide vogue. Even the later Takkanot of the Three Communities were in reality the decisions of Synods representing the whole of the Rhine country. Knowing what we do of R. Gershom's synodal activity, it is very probable, to say the least, that this most important and best known of his ordinances should have been made by one of the Synods of his time. Finally, Rosenthal seems to imply that this section dates back to R. Gershom. That is unlikely. It speaks of R. Gershom in the third person and could not have formed part of the text of his ordinance itself. If we assume, therefore, that R. Gershom originally intended this Takkanah at least for all the German communities, if not for all those of France, as well, we must interpret the words, "of three communities of three provinces" as being merely a legal redundancy. What is wanted is that the 100 men come from three provinces. It is possible of course, that in earlier times, when the Takkanah was limited to Germany, the requirement was only that the 100 men be of any three communities—not *the* three communities, as Rosenthal would have it. It may even be that the confusion arose out of a misunderstanding of the word *Medinot* originally used in the regulations and still found in text M. This word has regularly in Hebrew texts from Arabic-speaking countries, and at times also from other countries, the meaning of *city*. It would be natural that as the Jewish communities of the West developed and the word *Medinah* came in Germany and France to be limited more and more to the connotation of "province," that two interpretations should arise. As usual both variants crept into the texts. In any case it is probable that when the French Jews accepted the Takkanah the people felt that the 100 men ought to come from three different provinces. This hypothesis gains color from the fact that in every case where provinces are mentioned by name in the earlier texts, they are French provinces. When the Takkanah spread further, the demand was made that the releasing Rabbis hail from at least three different countries. The scribes in accordance with this new

AA	M	K
2. The *herem*[1] taken upon himself by a betrothed man (to keep his engagement) also may be set aside[2] only by one hundred (men) but they need not come from three different countries.	3. The *herem* which people take upon themselves may be set aside by one hundred (men) but they need not come from different countries.	2. But the *herem* regarding engagements may be set aside by people not living in different countries.

interpretation, intentionally or unintentionally, misread the original text in regard to the names of the provinces. For Normandy they substituted Lombardy; for Anjou, in some cases Hungary in others Aragon, and so forth. These variants will be found in the notes.

[1] It was customary to re-enforce the Takkanah against breach of engagement by having the parties undertake under the *herem* to marry. This custom is referred to in the list of Takkanot. It is also mentioned in another case in connection with R. Yehiel of Paris. Since Jewish law requires the widow of a husband who died without children to marry his brother or undergo the ceremony of *Halizah* it became customary for childless husbands on their deathbeds to grant their wives writs of divorce, with the understanding of course, that should they recover they would renew their marriage. R. Yeniel would engage them for the re-marriage under the *herem*, before they were divorced (*Kol Bo* 141). The betrothal and its release are mentioned again in connection with R. Yehiel. In a case that came before him, he decided that only thirty persons from three provinces were needed to release them. The one hundred persons "were needed only in the case of the *herem* against compulsory divorce" (*Mordecai*, ed. Riva, *Yebamot*. 1.742). That differs materially from the custom as described in the text before us, which required for the release of the "betrothal under the *herem*" one hundred persons not necessarily from three provinces, and for that of the "betrothal without the *herem*" thirty persons. The customs instituted by R. Yehiel in this connection spread far and wide continuing for many centuries (Res. R. Meir Lublin, 123).

There can be no doubt, however, that the reading of M is the older and that the rule applied in the first instance to any *herem* taken by a person upon himself or herself.

[2] A very interesting case came before R. Meir b. Baruch (*Hagahot Mordecai Niddah* 781) under this section. A young man who had been affianced to a girl became an apostate. She was afraid to choose another

3. It is an ancient *herem* that an engagement in the case of which pledges have been placed as security should be observed even though the parties did not bind themselves by a *herem*.[1] But it may be released by thirty men. In all these cases a cogent reason must be given for the release.

2. An engagement in the case of which pledges have been placed as security without a *herem* should be observed according to an ancient *herem*, but it may be released by thirty men; but in all these cases a cogent reason must be given for the release.

3. An engagement in the case of which pledges have been placed as security without a *herem* should be observed according to an ancient *herem*, but it may be suspended by thirty people. In all these cases the reason for suspension of the *herem* must be made clear.

4. If a man binds himself by a *herem* he can be released only by one hundred persons but they need not come from three countries.

in his place because of the *herem*. But R. Meir decided that so long as he remained outside the fold, she was not bound to him. Should he repent, however, she would have to accept him in spite of the blemish, provided of course she had not in the meantime been engaged to another.

[1] A betrothal without the *herem* is, of course, less binding then a betrothal under the *herem*. Just what the ceremony of betrothal consisted of, it is not easy to state. From some sources it would seem that the parties gave security to guarantee their maintaining their promises. This can be seen from an oft quoted responsum of Rashi (*Sefer Ha-Orah* 141, RFL 27, RMC 90, Res. Maim. *Kinyan*, 26). He says, "and in regard to your inquiry concerning the case of R who engaged his niece to his son, and they affirmed their words and placed the *guarantees in the hands of the kablanim*." The German-Yiddish expression for engagements—*knas legen*—would seem to bear out this idea. On the other hand in the more ancient *Ma'aseh Ha-Geonim*, p. 65, the expression ידי חשומה is used merely as referring to the ceremony of betrothals. We read there, "And if he did not marry her in accordance with the Biblical custom, but only in accordance with the local custom, where they put a covering on the head of the bride as the

sign of engagement". It is possible, of course, that besides the custom of covering the future bride's head, there was the further depositing of the securities. The expression יד חשומת which originally meant "giving a handsel" as pledge that one intends to marry the other, came to mean the pledges by which the promises were secured, but which were not a necessary part of the ceremony. The two parties might trust each other to pay the fines eventually. The word *Shiddukin* itself, properly meaning betrothal, underwent a similar development in meaning. In a passage in *Kol Bo* (124:31) it means nothing else than the pledges by which the betrothal is guaranteed. In *Or Zarua* (*Sanhedrin* 28) we hear of a custom to declare the engagement before the "best men of the city", that is, the council, so that it might have communal sanction and thus be the more binding. See also the Geonic Responsum cited in *Ittur*, *Pesakim* I, 66d.

CHAPTER III

TAKKANAH OF RASHI

In *Hagahot Asheri* (*Baba Batra* chapter II, section 11) we are told that "Rashi ordained in France that if one has money belonging to his neighbor, with the arrangement that one half of the gain is to be given to the investor and one half to the manager, the manager must pay taxes on the half of the capital, the gain of which is his. If the capital belongs to Gentiles, one need pay nothing. Regarding places where this ordinance does not hold, R. Tam stated in a responsum that the manager need not pay any taxes on the capital with which he is doing business."

In the responsa of R. Meir b. Baruch (ed. Berlin, p 320) occurs the text of a Takkanah ascribed to "R. Solomon of Troyes" which contains the first of the ordinances cited in the name of Rashi in *Hagahot Asheri*, but in which no provision is made for exempting from taxes investments by Gentiles, when made through a Jew. This omission should not, however, argue against the identification of the Takkanah with that of Rashi, since a comparison of the text of *Hagahot Asheri*, with that of a responsum of R. Tam, quoted in *Mordecai*, *Baba Kamma*, 10.179, will show that the original Takkanah did not exempt the investments made by Gentiles through Jews except by implication.

In *Mordecai* we read:

מה שנוהגין במלכות זה לתת משל אחרים לא נהגו אלא מן החצי שהוא מלוה ולא מן החצי שהוא פקדון ואפי' מן החצי שהוא מלוה לא נהגו אלא מפני שקבלו עליהם מתחלה מדעת כלם ומשל גוים אין נותנים כלום דכולה פקדון וכן תקן רבינו שלמה זקיני במלכותינו ושלום יעקב בן מאיר

"As for the custom which is prevalent in this kingdom of paying taxes on the capital invested with one by other people, that custom applies only to the half, the profits

of which belong to the agent. Even in that case they pay only because they have undertaken to do so by general consent. And *one pays no taxes on the capital invested by Gentiles since it is considered a bailment.* Thus did R. Solomon, my grandfather, ordain in our kingdom." (The text of the *Mordecai* is to be compared with the *Nimmukim* of R. Menahem Merseburg, printed at the end of the Hanau edition of Res. R. Jacob Weil).

It is more than likely that it was R. Tam who stressed the fact that one "does not pay on the money invested by Gentiles," but since that clause was put in its present place, it seemed to the copyist that it was part of the Takkanah of Rashi. There is to be no reason therefore for refusing to accept the following text as that of the Takkanah of Rashi.

A summary of the contents of this Takkanah is given in part I (p. 37), and it is therefore unnecessary to add a translation here.

TEXT

אנחנו שוכני טרוייש עם קהלות אשר סביבותיה גזרו באלה ובנידוי ובגזירה חמורה על כל איש ואשה הדרי' כאן שלא יהיו רשאי' לצאת עצמן מעול צבור וגם היום או מחר גם אם השלטון היהודי' מוציא להבדיל מדעת ישראל ומצא שלא פרע בעול עם חביריו גזרנו שיתן כל א' ולא יקל ממשאו ואם לפרוע דבר על השלטון והפרידו מאחיו מן היום הזה והלאה יהיה נמנה עמהם ויתן כל א' מליטרא שלו לפי מה שיצונו בני העיר כאשר נהגו מיום הוסדה וכן קבלנו מקדמונינו שהי' לפנינו לתן מכל ממונו לבד מכלי תשמישו ובתים וכרמים ושדות וממון של גוים שמרויח בהן לא יתן מן הקרן אך אם יש לו פקדון מישראל חבירו יתן מחציו שבאחריותו ואם יש לו כלי כסף וכלי זהב ותכשיטי נשים וטבעות יתן מחצי דמיהן ואם יש ביד ישראל מלוה באחריות שלו כגון גומלי חסדים שתחלת הלואתו בגמ"ח היתה לאחר שעבר השנה יתן מן הכל רק בתוך שנתן לא יתן אבל שמענו שכך מנהג קדמונים שאחד מבני העיר שיש לו ממון שהוציא מן העיר שיתן מן הכל לבד אם בא לגור ולא להכניס ממונו בעיר לא יתן עד שיכניסם וישא ויתן בהם ואם היה צרור ומונח לא יתן עד שישלח בו יד ואם מן הדרי' כאן נותני' מתנה לבניהם או לבנותיהם והוציאו מן העיר כל זמן שהבנים בעיר או הלכו מן העיר לפי שעה ודעת האב להרויחם בעיר יתן בעול צבור מאותו ממון ואם יש לאחד ספרים ממושכנים בידו שגמל חסד לאחיו יתן מהממון שעל הספרים. הועתק מרבי' שלמה מטרוייש.

CHAPTER IV

TAKKANOT OF R. TAM

TEXT A. INFORMERS

The Takkanah of R. Samuel b. Meir and R. Jacob Tam, his brother, regarding defamation was, as has been shown in Part I, p. 42, probably a direct result of the Second Crusade. We have six texts of this Takkanah before us, of which three have been printed. They are to be found: 1. In RMC 78 (called below RMC, Heb. מ); 2. In Ha-Lebanon, II.91, which text has been published from a Guenzburg Ms. by B. Goldberg. This text is called below D, (Heb. ע); 3. In R.E.J. 17.66, from Br. Mus. Ms. 11639, Margoliouth 1056, published by Neubauer with variants from the Guenzburg Ms. This text we will call N (Heb. נ). The manuscript material consists of: 4. A Halberstam Ms., now in the Montefiore Library (Cat. Hirschfeld, 492, fol. 22ff). This text is referred to as R., Hebrew ר. 5. Another Halberstam Ms., now in the Montefiore Library, (Cat. Hirschfeld, 130). This text is called C, Hebrew ג. 6. A British Museum Ms. (Add, 27129, cat. Margoliouth 1281, ff. 126b–127a). This text is so different from the others that it has been printed separately below, p. 159.

Besides these texts there are three abstracts of the Takkanah which so far as can be seen are independent of one another. They are found in the Munich Talmud Ms. (Strack, photographic edition, folio 756a); in the *Kol Bo* (section 117) and in RMP 1022. These abstracts are of little help in reconstructing the original text. From the RMP text, however, we learn that among those who attended the synod at Troyes which ordained these Takkanot, were R. Eliezer b. Samson of Cologne, and R.

Eliezer b. Nathan of Mayence. This information we find in no other source. The abstract which is found in *Kol Bo* (section 117) has retained the language of the original Takkanah to such an extent that it supplies several variants. It is referred to hereinafter as K, Heb. כ while the variants from the RMP text are marked א. The abstract which is found in the Munich Talmud Ms. (Strack's photographic edition, folio 576a reprinted below, p. 191) contains a section which has no corresponding paragraph in the text of the Takkanah as we have it. This paragraph reads thus:

גם לא תחול על השם מלשין ששם א[ותו] בידי גוים

"The *herem* shall not apply to one who denounces a *malshin* who has previously denounced him to Gentiles." This provision which is not found in any of the complete texts of the Takkanah, is repeatedly mentioned, usually with disapproval, by R. Meir b. Baruch. In one case (Res. Maim. *Nezikin* 15; *Mordecai, Baba Kamma*, end) a certain R. Joel had made statements to Gentiles which were detrimental to a fellow-Jew. His defense was that he had merely acted in vengeance because the other Jew had made similar statements about him. Some scholars were inclined to acquit Joel on the basis of the alleged Takkanah of the Communities justifying acts "committed in passion." R. Meir declared that he could not believe that such a Takkanah existed. For the second informer, Joel, had gained nothing by bringing trouble on his adversary. The Communities, at best, might refuse to punish Joel. They could not, however, refuse to award damages to the man who suffered through the denunciation.

In another case (RMP 717) a person had been struck by another. The son, seeing his father bleed, became furious and denounced the assailant to the authorities. R. Meir refused to consider his filial "indignation" an excuse. "Even if his father had bidden him denounce the other, he should not have done so."

In a third case (RMP 994) R. Meir, and recognizes the possibility of the existence of such a Takkanah. A denounced B to the authorities because some fifteen years (days?) previously B had bitten his finger until blood flowed

B summoned A to Jewish Courts for defamation. A presented a double defence. First, he had made no defamation. Secondly, if anyone had made any defamation in his behalf, that was done "whilst his heart was hot". R. Meir as usual believes that in such a case the informer ought to be freed from fines and punishment, which otherwise would be laid upon him, yet he could not be held guiltless for the damage he had done. At the end he adds, however, "But if there is an ordinance of the Communities to free him completely if the act was done in the heat of passion, I do not take issue with an ordinance of the Communities." On the other hand R. Hayyim Or Zarua (HOS 25) states quite definitely that if a denunciation were committed in time of anger, he would not convict the informer or compel him to pay any damages at all. He even quotes R. Meir in support of this decision. Whatever may have been the source of R. Hayyim's statement of R. Meir's views, it is certain that R. Hayyim understood the ordinance as completely freeing the *Malshin* in times of indignation.

TEXT

צץ המטה פרח1 והיה לתנין ונהפך לנחש נשך בלי לחש את האיש כזבובי מות הבאיש שמן רוקח ולפקח על עסקי רבים החזקנו ידים רפות כתועפות ראם להרים ראש נרמס ברגלים עד אגלים דמעת יללתה2 למחותה מעל פנים3 למען לא תגדל תפארת בעלי ממארת המוציאים שם4 רע עלינו ועל בנינו5 לירות במו אופל דרוך6 לשונם במרמה ובצנעא וכ"ש בפרהסיא והיום הזה7 עמדו פריצי8 עמינו מהם התנשאו9 להעמיד חזון בפיהם ולהשמיד בלבבם ומהם מרגילים לדבר עבירה מלשני בסתר ובגלוי על ידי גוים ושרים והדיוטות ושניהם לדבר עבירה נתכוונו.

1 פרח...לתנין] ע. ב. היה לתנין פרח ברוש.
2 מ. ומעת יללותה. ע. דמעתן.
3 נ. ע. ר. מ. פניו.
4 שם] נ. מ. נ. ר. ח'.
5 מ. ר. ע. בינינו ועלינו.
6 ע. דרוך לשונם.....ובגלוי ל'.
7 נ. ל'.
8 נ. ר. מ. בני פריצי.
9 נ. ותנשאו. נ. נתנאו.

לכן נועצנו לב יחד זקני טרוויש וחכמיה ואשר בגבוליה[1] סביב חכמי[2] דינון וסביבותיה גדולי אלצווירא[3] ושנץ ובנותיה וישישי[4] אורליינש[5] וסביבי הארץ ואחינו יושבי קאלונש[6] וחכמי גבול ריינש[7] ורבותינו שבפריש ושכניהם וחכמי יועצי מלאון[8] ואייטנפש[9] ויושבי נורמנדיאה[10] וחבל הים ואניוב ופוייטוב גדולי דורנו יושבי ארץ לותיר מן המזכרים פה יש[11] שכבר הסכימו ויש אשר לא שמענו דבריהם כי היה הדבר נחוץ וסמכנו על אשר ידענום גדולים נשמעים לקטנים והדין דין אמת ואילו לא נכתב ראוי היה ליכתב.

1. ונמנינו וגזרנו ונידינו והחרמנו על[12] כל איש ואשה קרובים ורחוקים אשר יביא את חבירו בדיני גוים[13] או יכופנו על ידי גוים הן שר הן הדיוט[14] הן מושל הן סרדיוט אם לא מדעת שניהם בפני עדים כשרים[15].

2. ואם יתגלגל הדבר וישמע[16] למלכות או לגוים ועל ידי כן יכופו את חבירו[17] נזרנו ונדינו והחרמנו על אותו האיש שיפצה את חבירו מידם[18] וישקיט[19] לו מן הגוים המסייעים אותו שלא יהא נזוק[20] ומאוים ומאבד תביעתו או ממונו ושלא יהא ירא מהם ויפייסנו במה[21] שיאמרו שבעה טובי העיר ואם אינם בעירו בעיר הסמוכה שישנם בה[22].

3. וגזרנו ונדינו והחרמנו שלא יאיים[23] על שבעה טובי העיר על ידי גוים.

1 כ. וכל סביבותיה.
2 חכמי דינון...פה] מ. ר. נ. כל יושבי צרפת.
3 ה. אליורא.
4 ע. ישישי.
5 ע. ארלייץ.
6 ע. קאלונץ.
7 כ. רייש. נ. ריינוש.
8 כ. לאון וקרפנטרא.
9 כ. ואנטנבש.
10 כ. ולומברדיאה.
11 ע. ויש.
12 על ..גוים] ע. שלא יאיים אדם על כל איש ואשה הקרובים והרחוקים להביא בדיני גוים.
13 מ. ר. גוים עע"ז.
14 כ. הן הדיוט ל'.
15 א. אך אם הוא סרבן לבא לב"ד ויש עדים בדבר לא חל עליו גזרתנו.
16 כ. ל'.
17 נ. איש חברו. ע. את האחר.
18 נ. ר. ל'.
19 ע. וישקלו.
20 ע. נדון.
21 כ. כפי. ע. כאשר. נ. ר. כמה.
22 כ. שישנן שם ואם הם יעותו משפט אינן טובי העיר ויתקנו על פי דיני אמת הסמוכים אליהם.
23 ע. שלא יאיים אדם על.

ויען וביען כי בעלי לשון הרע ומסורות עושין במחשך מעשיהם גזרנו נדוי אף על ידי גלגול אם לא יפצהו על פי שבעה טובי העיר.

4. וגזרנו ונדינו והחרמנו לישאל להם ביום ראשון שיוכל[1] לישאל ולאלתר לפצותו ולהשיב הפסדו ככל אשר יאמרו אליו.

5. ועוד גזרנו ונדינו והחרמנו שלא יהא אדם רשאי ליטול שררה על חבירו על ידי מלך שר ושופט כדי לענוש ולקנוס ולכוף[2] לא בדברי הבאי ולא בדברי שמים כי יש עושים עצמם פרושים ואפילו צנועין[3] (צבועין?) אינם.

6. והעובר על שלשה גזרותינו[4] אילו יהא באלה ובנידוי ובשמתא ומוחרם בשם מיתא ובשממה יהיה ויהיו כל ישראל מובדלים[5] ממנו חתומים[6] ואינם חתומים ותלמידיהם ותלמידי תלמידיהם וחבריהם גדולים וקטנים.

7. והעובר על גזירותינו פתו פת כותי ויינו יין נסך ספריו ספרי קוסמין[7] והמדבר עמו כמותו[8] והיה חרם כמוהו ואשר ישים אל לבו וחרד אל דברי יוצרינו ואל דברינו יראה דברינו טובים[9] ונכוחים וגזרה קדמונית על המלשינים ועל המסורות ומסתירי לשון הרע ואם יחטא איש לאיש[10] ופללו אלהים אך אצבע גוי[11] לא ינע ולא יעבור זר[12] בתוכם ויתנהגו עצמם בקדושה ובטהרה להתקדש[13] ולהיות מובדלים מעמי[14] הארץ ואיש על מקומו יבא בשלום.

8. ואם מדאגת המלך[15] ידבר איש עמו לפי שעה לא יחול עליו נדוי ובלבד שלא יערים ושלא ירבה שיחה עמו כמו ששנינו גבי עוברות ומיניקות[16] בשאר תעניות לא יהיו מתענות ולא שיהיו נוהגות עצמן במשתה ובתפנוקים אלא אוכלות ושותות כדי קיום הולד (ירו' תענית ס"ד ג').

1 מ. נ. ר. לישאל להם לאלתר ביום ראשון. ע. לשאל מהם מחילה מיד שיוכל. כ. להשאל להם.
2 כ. ע. ל'.
3 ע. צנועין ואפילו צבועין.
4 ע. והעובר על אחת הגזרות. נ. והעובר על ניזרתי'. ג. והעובר..וקטנים ל'.
5 נ. בדילין.
6 כ. חתומים.....גזירותינו ל'.
7 כ. כליו כלי חרש זחיו זחי סעילה.
8 נ. ר. מ. יהיה כמותו. כ. יהא כמהו.
9 כ. יראה כנים.
10 כ. לרעהו.
11 מ. נוי ע"ז.
12 נ. ר. זר ל'.
13 כ. ע. נ. ל'.
14 ע. נ. מטמאת עמי הארץ.
15 כ. או מיראת המושל.
16 נ. ע. ל'.

9. ועל[1] הסרבן לבא לב"ד ויש עידים כשרים בדבר אם יוציא[2] אותה תביעה לבדה ע"י גוים לא יחל עליו נדויינו.

10. ואנחנו החתומים מבקשים כל קרובים למלכות לרדות ע"י גוים כל העובר אחת מגזירתינו אלה לקיים עליהם לשמור מאד לעשות והיה[3] מעשה הצדקה שלום. יעקב בהה"ר מאיר שמואל בהה"ר מאיר שמואל בר יעקב[4] יצחק ב"ר שלמה טרוייש[5].

TRANSLATION

The introduction which is in the usual style of the French rabbis of the period recites the serious troubles that had come upon the Jews because of denunciations. Some had defamed their fellows in secret, other had committed the crime in public, with equally dire results. The ordinance continues thus:

"Therefore have we taken counsel together, the elders of Troyes and her Sages, and those of her vicinity, the Sages of Dijon and its vicinity, the leaders of Auxerre, and of Sens and its suburbs, the elders of Orleans(?), and the vicinity, our brothers, the inhabitants of Châlon-sur-Saone,[1] the Sages of the Rhine country, and our masters of Paris, and their neighbors, the scholars of Melun and Etampes, and the inhabitants of Normandy, and the shore of the sea, and Anjou and Poitiers, the greatest of our generation, the inhabitants of the land of Lorraine; of those mentioned here, some have already agreed and from some we have not yet heard, but since the matter was pressing, we were confident (in their agreement) knowing that they are great men who listen to their inferiors, and knowing that the decision is a correct one, which if it were not written down, ought to be written down.

1. We have voted, decreed, ordained and declared under the *herem*, that no man or woman may who bring a fellow-

1 ע. וגם על.

2 כ. אם יביאנו התובע בערכאות של גוים באותה תביעה לא יחול עליו נדויינו זה.

3 מ. וזה.

4 ע. יצחק בן מאיר. מ. ר. ל'. פ. אליעזר בר נתן וק"ן זקנים. נ. יצחק ב"ר שלמה משנץ שמואל ב"ר יעקב מאלצורא יצחק ב"ר נחמיה מדרום פרץ ב"ר מנחם מיוני.

5 ע. שלמה בן מאיר מ. ל'.

[1] See *Gallia Judaica*, p. 592.

Jew before Gentile courts or exert compulsion on him through Gentiles, whether by a prince of a common man, a ruler or an inferior official, except by mutual agreement made in the presence of proper witnesses.[1]

2. If the matter accidentally[2] reaches the government or other Gentiles, and in that manner pressure is exerted on a Jew, we have decreed that the man who is aided by the Gentiles shall save his fellow from their hands, and shall secure him against the Gentiles who are aiding him so that the Jew may not be harmed or even be in apprehension because of the Gentiles, nor shall he lose his claim or his property. He shall see to it that his fellow shall be in no fear of them, and he shall make satisfaction to him and secure him in such manner as the seven elders of the city will ordain. If there is no such board in his town, he shall act on the order of those of the nearest city in which such are to be found.

3. He shall not intimidate the "seven elders" through the power of Gentiles. And because the masters of

[1] More noteworthy than the prohibition against taking Jewish litigations to Gentile Courts, is the permission to have them adjusted there if both parties agree. The Talmudic law prohibits the use of the Gentile Courts in any case, for "he who brings a Jewish suit before the tribunals of the idolators profanes the name of God and glorifies the names of the Idols" (*Gittin* 84b). It is evidence of the greater tolerance that was arising among the French rabbis that they do not include Christians in the category of idol-worshippers. The only reason for keeping Jewish litigations in Jewish tribunals was the fear of the injustice of the Gentile courts. Therefore, where both parties agreed the rabbis of France could see no reason for hesitation in bringing matters before them. This is in consonance with the lenient view of some of the French rabbis in regard to wines of Gentiles and similar matters (Comp. *Tosafot Aboda Zara* 57a, See Part I. p. 41).

[2] The position of the Board of Seven in the Medieval communities is not very clear. Josephus speaks of seven judges in each city (*Antiquities*, 4, 8.14. Comp. also Acts 6.3). The expression occurs also in Tannaitic sources. We read "Seven men from a city may act on behalf of the city, three men of synagogue may act in behalf of the synagogue". (*Baraita* Jer. *Megilla* 74a). The meaning of the statement is not clear. Raba in *Babli* (*ibid.* 26a) mentions in that connection the "seven best men".

wicked tongue and informers do their deeds in darkness, we have decreed also excommunication for indirect action unless he satisfy him in accordance with the decision of the "seven elders" of the city.

4. It was further decreed that he should apply to them (to the "seven elders") on the first possible day, and that he should return the damage in accordance with all that they decree to him.

5. No [1] man shall try to gain control over his neighbor through a king, prince or judge, in order to punish or fine or coerce him, either in secular or religious matters, for there are some who play the part of saints and do not live up to ordinary standards. [2]

6. He who transgresses these three decrees [3] of ours shall be excommunicated, all Israel shall keep apart from him, those who sign (this decree) as well as those who do not sign, their pupils, and the pupils of their pupils, their comrades, great and small.

7. As for him who transgresses our decree, his bread is that of a Samaritan, [4] his wine is that of libations, his books are as those of the magicians, and who converses with him is like unto him; and he shall be in excommunication like him. [5] But he who takes these matters to heart, and is apprehensive of the words of our Creator and our words, will find our words good and upright. There is an old ordinance against informers, *malshinim*, and those

[1] This section was re-enacted by the German communities in their synods in the thirteenth century (see below p. 232).

[2] A play on a phrase ascribed to King Jannai in *Sotah* 22b.

[3] The three decrees are:

(1) That prohibiting application to Gentile courts for remedy against Jews;

(2) That enjoining on a Jew on whose behalf appeal had been made to Gentiles to save his opponent from their hands;

(3) That forbidding a Jew to accept a Jewish communal office at the hands of Gentiles. Since there are five paragraphs preceding this, the scribes were confused by the mention of "three" decrees and omitted that word in D and N.

[4] *Hullin* 13a.

[5] A play on Deut. 7.26.

who tell tales in secret; if a man sin against man, let him be judged by proper judges,[1] but let not the hand of a stranger pass among them, and let them behave themselves with sanctity and purity, separating themselves from the peoples of the land, then shall each come to his destination in peace.[2]

8. If because of the fear of the Government, a man speak to the informer occasionally, this excommunication shall not fall on that man, provided he does not use this pretext to multiply words with him. This is an application of the principle given in regard to the fasting of pregnant and nursing women on fastdays other than *Yom Kippur* and *Tisha B'Av*,—'they need not fast, but yet yet they must not indulge in delicacies; they may only eat and drink for the sake of the child'.[3]

9. If one refuses to come to Court and there are proper witnesses in regard to the matter and the plaintiff collects a claim through the power of Gentiles, our excommunication will not apply.

10. We, the undersigned, request all those that are in touch with the government to coerce through the power of Gentiles anyone who transgresses our commandments, in order that the Scriptural injunction, "to observe very much and to carry out"[4] what they are commanded, may be fulfilled. And righteous action leads to peace.[5]

Samuel b. Meir
Jacob b. Meir
Samuel b. Jacob
Isaac b. Solomon Troyes.

The following is the text of the Takkanah as it is found in Ms. Br. Mus. Add. 27129 (Marg. 1281). The text is in some respects shorter than that given above, but it contains a number of points of interest which appear to justify its inclusion here.

[1] A play on I Samuel 2.25.
[2] Cf. Neh. 10..29, and Ezra 6.21 for the variant.
[3] Cf. *Jer. Taanit* 64c.
[4] Deut. 24.8.
[5] Play on Isaiah 32.17.

זה הכתב שנקרא צץ המטה שגזרו רבינו שמואל בן רבי' מאיר [צ"ל ור' יעקב ב"ר מאיר] ורבי יצחק אחיהם בני התייר הגדול רש"י ושלחו בכל הגולה שבמלכות צרפת ולותיר ואשכנז והרבה מספרד הגדולים והנדיבים כולם חתמו בזאת האגרת והטילו חרם ושמת' עליהם ועל זרעם לעולם והא לך האגרת

צץ המטה היה לתנין ופרח בראש נהפך לנחש על מוציאי לשון הרע מלשיני סתר ופרהסיא ומוסר חברו..... שר והדיוט וסרדיוט אילו לא נכת' ראוי היה ליכתב ונמנינו וגזרנו והחרמנו כל איש ואשה שיבא חברו ביד גוים שר ומושל סרדיוט והדיוט אם לא מדעת שניהם ובפני עדים כשרים.

ואם יתגלגל הדברים ויבאו לפני הממשלה והגוי ויכפוהו ע"י כך גזרנו ונדינו והחרמנו על אותו איש שיפצה חברו מידם וישקי' לו מיד הגוים ויסייעו שלא יהא נדון ומאויים מהם ומאבד ממונו ותביעתו ויפצנו כמו שיאמרו ז' טובי העיר.

וגזרנו ונדינו והחרמנו שלא יאיים ז' טובי העיר על גוים וישאל להם יום ראשון שיוכל לשאל להם לאלתר לפצותו ולהשיב הפסדו בכל אשר יאמרו.

ועוד גזרנו ונדינו והחרמנו שלא יהא רשאי ליטול שררה על הצבור ע"י מלך או שר כדי לענוש ולקנוס לכוף בדברי הבאי או בדברי שמים והעובר על גזרתנו אף על אחד מהם יהא בנדוי באלה ובשמתא בשם מית' ומוחרם ובשממה יהיה וכל ישראל יהיו מובדלים ממנו וכל הבאים אחרונו פפ"ך [פתו פת כותי] יי"ן [יינו יין נסך] סס"ק [ספריו ספרי קוסמין] וכל המדבר עמו יהיה כמוהו.

וכן נדינו על המסרהב על דורו למסור למלכות עוברי על דת שחלל תורתי' וכבד ערכאותי' ולא כצורנו צורם ואויבינו פלילים.

ורשאים בני העיר לומ' כל מי שידבר עם פלוני יתן כך וכך או מי שיתרצה למלכות כמו כן ולהסיע על קיצתן ואיש יחטא ופללו אלהים אך יד גוי לא יהיה ביניהם.

ואם מדאגת המלך ידבר עמו לפי שעה לא יחול עליו הנדוי אך לא יערים ולא ירבה שיחה עמו דאמ' בירושלמי עוברות ומניקות בשאר תעניו' אין מתענות אך לא יהיו נוהגות עצמ' בתפנוקים אלא אוכלות ושותות כדי קיום הולד.

וגם על הסרבן לבא לב"ד ויש עדי' כשרים בדבר אם יוציא אותה אותה תביעה לבדה ע"י גוים [צ"ל לא] יחול עליו נדויינו זה דאמרינן בהחובל קרי' לחברך ולא ענך גודא רבה שדי עלי' אך יאמ' דבר לב"ד ושיבאנו בערכאו' ש"ג ונתננו רשות לכל קרובי' למלכות ע"י גוים כל העובר על אזהרתינו וגזרתינו זאת והיא גזרת חרם ושמתא קדמונים מן הגאוני' על המוסר ישראל וממונם לגוים ומלשיני סתר ופרהסיא וחדשנוה וכשיתקן הכל עפ"י טובי העיר יתירו לו נדויו במנין עיר הישוב או במנין עיר הסמוכ' לישוב

אפי' אין בישוב מנין ולדבר לפי שעה עם המנודה כל בי עשרה מן החשובי' העיר ועירם יתירו לו והעובר לדבר שוגג שאינו קרוב למזיד עם המנודה אינו בכלל נדוי.

פה חתומין ג' אחין גדולים ואורים ואחריהם כל ישראל שבערים ושבמדינות שבארתי וקצר הלבלר כי השמת' כתובה במקום אחר

TEXT B.

RETURN OF THE DOWRY

This ordinance of R. Tam has been discussed in Part I, p. 43. Neubauer published two versions of it R.E.J. 17. 71. The first, which will be called N herein, he based on three manuscripts, one from the British Museum, 11639, Marg. 1056 (L. Heb. נא) which he uses as a basis; a Bodleian Ms., Neubauer 847 (O, Heb. נב), and a Guenzburg Ms. (G. Heb. נג) from which he gives the important variants.

The second version (S) of Neubauer's is taken from another British Musuem Ms. Harl. 5686 (Sc. Heb. נד). It was originally copied from the *Sefer Ha-Yashar* of R. Tam. We have thus to compare it with the text as found in the printed *Sefer Ha-Yashar* (Sa. Heb. יא) and in the quotation from that book in the responsa-collection, *Binyamin Zeeb* (60). The latter is referred to below as Sb. (Heb. יב).

Besides the texts that have been printed, the following Ms. material was used in establishing the text of this ordinance. Ms. Halberstam, (Cat. Hirshfeld 492, ff. 19–21 called herein D (Hebrew ד); and a text taken from the *Sefer Ha-Yashar*, called herein Sa (Heb. יד).

A version that differs in many details from either of these is found in RMP 934, (P, Heb.); and still another in RMC 72 (C, Heb. ב). There are also included below the variants found in the summary of the Takkanah given in *Kol Bo* 117 (K. Hebrew כ) and in RMP 1022 (MP, Heb. א).

The N version shows definite signs of being more nearly original than the S version. Thus in paragraph 2, the versions read thus:

על כל נושא משה ומתה תוך שנתה בלא ולך של קיימא עד עבור שנת נשואיה שיחזיר כל הנדוניא.

(S)	(N)
ותכשיטי האשה ליורשיה או לנותני הנדוניא	וכל התכשיטין לנותני הנדוניא או ליורשיו

That if anyone marries a wife, and she dies within a year of their marriage, he shall return all the dowry

(S)	(N)
and all the jewels of his wife to *her heirs or those who gave the dowry*	and all the jewels to him *who gave the dowry or his heirs.*

The change[1] of text in S makes the provision difficult to understand. Is the dowry to be returned to the heirs of the wife or to the person who gave it? They need not necessarily to be the same. Suppose that her father was living but that she received her dowry from a brother who was wealthy. Is the dowry to be returned on her death to her heir, namely the father, or to the giver, namely

[1] Another case in which it is clear that S changed the text of N, occurs in paragraph 3. There N reads ועוד גזרנו מן העתיד לגבות שלא יחבע החתן לעולם אפילו מהה אחר שנת נשוא[ה] ואפילה ילדה "And we have further ordained that so far as the uncollected portion of the dowry is concerned, the *bridegroom* shall never demand it." The copyist of S must have inserted את before the word החתן so as to read: ועוד גזרנו מן העתיד לגבות שלא יחבע את החתן לעולם אפילו מהה לאחר שנת הנישואין ואפילו ילדה "And we have further decreed that so far as the uncollected portion of the dowry is concerned, he shall not demand it *from the bridegroom* at any time."

The various texts of S have sought to remedy the defect by changing the words את החתן to את החותן "the father-in-law", or את חמיו ואת חמותו "his father-in-law or his mother-in-law". The very fact that the variations are so many shows that they all had a difficult text as a basis.

Further variants which are common to all S versions are the omission of the words אם חלתה האשה in par. 2, the substitution of י"ב חדש for שנתה the same paragraph.

In the second half of the Takkanah, curiously enough, S has generally preserved better readings. These a. marked in brackets in the text below, while the readings of N are given in parentheses.

the brother? No such difficulty can arise from the text of N, since there it is expressly stated that the dowry is to be returned to the giver, or if he is dead, to *his* heirs. It was the misreading of the abbreviation ליורש׳ as ליורשיה instead of ליורשיו, that misled the original copyist of the S version.

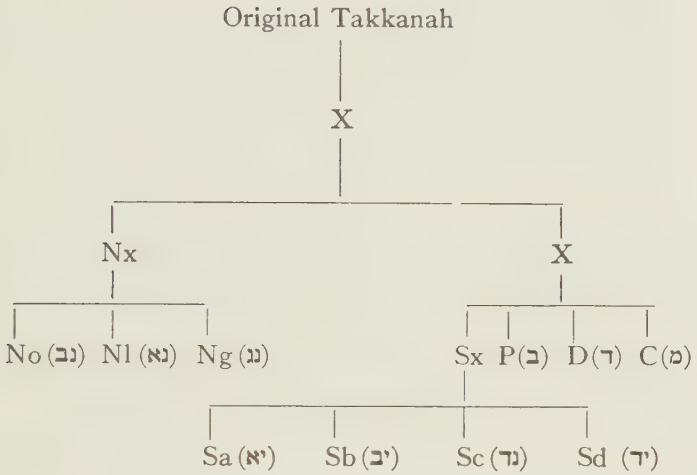
Furthermore, S has incorporated into the text of the Takkanah a note which was originally placed after it. It reads thus: "Afterward I recalled that is taught in *Torat Kohanim* (*Sifra*, ed. Weiss 111d) ..... that the verse, 'And your strength shall be spent in vain' (Lev. 26.20), refers to the case of a person who gives his daughter in marriage, and makes a large settlement on her, and before the wedding week is past, she dies."

The words "afterward I recalled" show that this is not part of the ordinance. In C where a somewhat elaborated form of addition is found, it is expressly stated to be not part of the ordinance but some additional words by R. Tam or one of his pupils.

It is clear, then, that S, which has changed the text of N, and which has incorporated into the text of the Takkanah an editorial note, is a later version that N.

C has several readings which are akin to N, but also some which rather echo S. It has, as has been mentioned, the note about the extract from *Torat Kohanim*, although it does not incorporate that into the text. The same is true of P and D, both of which are evidently derived from the same text. We must therefore assume that S, P, and C had a common origin, in a text to which this editorial note was appended, and which differed in several minan matters from N.

The following diagram will help to clarify the relation of the texts to one another.



TEXT

א. מטעם1 המלך וגדוליהם2 רבותינו יושבי נירבונא3 אשר שמענו ונדעה4 מזקיניהם ונאמר תהי נא אלה בינותינו יושבי צרפת5 אניוב פוייטוב ונורמנדיאה כאשר גדרו6 גודרי גדר גדולי נירבונה וסביב הארץ וגזרנו7 באלה חמורה בגזירת8 יהשע9 בן נון בספרי תורה בבית10 דין העליון ובבית11 דין התחתון ב. על12 כל נושא אשה13 ומתה תוך שנתה14 בלא ולד של קיימא עד15

1 מטעם... וגדוליהם] יב. יד. נד. ל׳.
2 וגדוליהם] ב. ל׳. מ. וגדוליו. נג. והזקנים.
3 וגדוליהם... נרבונא] ב. ד. ומגזירת [ב. מגזירת] רבותינו יושבי נרבונא. נא. וגדולי נרבונא.
4 שמענו ונדעה] ב. שמענום ונדעם. נד. שמענו ונדעם. מזקיניהם ונאמר] ד. ל׳. ב. יא. יב. נד. ומזקינים נתבונן ונאמר. יד. ומזקיניהם אתבונן ונאמר.
5 ב. צרפת ונורמנדיאה. מ. צרפת אניון וטרמנדיאה. יא. צרפת ואניוב נורמנדיאה. יב. צרפת ואניוב ונורמנדיאה. נא. צרפת אניו ופטייו ונורמנדיאה. נב. פריש אני פאטא ונורמאנדיאה. נג. אניוב פוייטוב ונורמנדיאה. נד. צרפת אניוב פוייטוב ונרמיניאה. פ. צרפת פוייטו ונורמנדיאה. ד. צרפת אניו ופוייטו ונרמנדיאה.
6 ד. יא. יב. נד. נזרו.
7 ונזרנו] ב. ד. יא. יב. יד. נד. וגזרו.
8 בגזירת יהשע... התחתון] ב. ד. ל׳.
9 יהשע בן נון] יד. ר׳ יהשע בנו נן.
10 בבית דין] נא. נב. נד. יד. מ. בגזירת ב׳ד.
11 (ובבית דין] נא. נב. נד. יד. מ. ובגזירת ב׳ד.
12 על] ב. ל׳.
13 אשה] נא. ל׳.
14 שנתה] יא. יב. נד. יד. י׳ב חודש. א. ד. שנתה של נישואין.
15 עד... נישואיה] א. ל׳.

עבור שנת נישואיה[1] שיחזיר כל הנדוניא[2] וכל תכשיטי[3] האשה לנותני[4] הנדוניא או ליורשיו[5] מה שישאר בידו שלא הוציא[6] ולא[7] יערים לכלות[8] אם[9] חלתה האשה רק מן הנמצא[10] יתעסק בקבורתה לפי כבודו[11] ויתעסק לרצונו[12] ועד[13] זמן ב"ד[14] ל' יום ישיב[15] להם אם יתבעוהו ועד שיתבעוהו[16] לא תהא[17] עליו הגזרה כי אם מיום התביעה אם[18] ח"ו לא ישיב עד ל' יום.

ג. ועוד גזרנו[19] מן העתיד לנבות שלא יתבע[20] החתן[21] לעולם אפילו מתה אחר שנת נישואיה[22] ואפילו ילדה.

ד. ודבר זה קבלנו עלינו[23] יושבי טרויש[24] וריימש ושלחנו שלוחינו[25] לסמוכי[26] מהלך יום אחד[27] ושמחו בדבר והחרמנו וגזרנו עלינו ועל כל הגלוים עלינו ועל זרעינו כאשר כתוב למעלה ועל כל יושבי צרפת[28] אניוב פוייטוב

1 נישואיה] ב. יד. נשואין, יא. יב. נד. מ. הנישואין.
2 מ. הנדן.
3 וכל תכשיטי] ב. מ. יא. יב. יד. נד. ותכשיטי.
4 לנותני... ליורשיו] יד. ליורשיו או לנותני הנדוניא. יא. יב. נד. ליורשיה או לנותני הנדוניא.
5 ליורשיו] ב. מ. ליורשיו.
6 שלא הוציא] ב. יא. יב. יד. נד. ד. <מן הנדוניא> מ. <ומה שלא בלת>.
7 ולא] מ. ושלא. יא יב. יד. נד. שלא.
8 לכלות] מ. לכלות ולבלות.
9 אם חלתה האשה] א. אם האשה חולה. מ. אם תחלה האשה. ב. יא. יב. יד. נד. ד. ל'.
10 מן הנמצא] יד. נד. <בידו>.
11 כבודו] ב. מ. יא. יב. יד. נד. ד. כבודה.
12 ויתעסק לרצונו] ב. ד. יא. יב. יד. נד. ל'. מ. לרצונו. א. יא. יב. יד. נד. <ומה שישאר, ישיב>.
13 ועד א. יא. יב. יד. נד. עד.
14 ב"ד] נא. נב. נג. ל'.
15 ישיב] ב. ישיבם.
16 ועד שיתבעוהו] ב. ד. ל'.
17 תהא] ב. ד. מ. יא. יב. יד. נד. תחול.
18 אם... ל' יום] ב. לאחר ל' יום ח"ו אם לא הי' משיב. ד. לאחר שלשים יום אם לא היה משיב ח"ו. מ. עם שלאחר ל' יום אם לא היה משיב ח"ו. יא. יב. יד. נד. עד לאחר ל' יום חס ושלום אם לא היה משיב.
19 ועוד גזרנו] א. ל'.
20 יתבע] ב. ד. ינבה.
21 החתן] א. מן החותן. מ. את את החותן. יד. אחח מותו. נד. את חמיו ואת חמותו. יב. את החתן. יא. את החוב.
22 שנת נישואיה] ב. ד. שנה, מ. שנת הנישואין.
23 עלינו יושבי] ב. מיושבי.
24 טרויש וריימש] ב. טרויש ורומש. ד. ק"ק טרויש ורומש. מ. טרויש וריאשו. יא. טרוישדריש. יב. טרויש. נב. טרייש פרוש וריינש. נד. טרויש ודינון. יד. טרייש.
25 שלוחינו] ב. ד. מ. יא. יב. יד. נד. ל'.
26 לסמוכי] ב. לסמוכי'.
27 יום אחד] מ. ב. ד. יא. יב. יד. יום. נד. מ' יום.
28 נד. צרפת פיטוב ואניאוב ונרמניאה. ב. צרפת ונרמנדיאה ואונויא ופייטן. מ. צרפת

ונורמנדיאה ויושבי סמוך לישובי הללו מהלך יום או יומים עליהם ועל זרעם לקיים גזרה זו כי מי יאכל ומי יהוש מה[1] שקפץ[2] האב או המשיאה ונתן לחתן אחר מות האשה[3] חוץ ממנו ויאכל[4] הלה וחדי.

ה. וראינו שיעור לדבר זה[5] שנה ולא יותר כי אחר שנתה[6] לא[7] יוסיף עצב בה[8].

ומה שגזרנו כתבנו וחתמנו[9] יעקב[10] בר מאיר נ"ע יצחק בר ברוך מנחם בר פרץ[11].

[אחרי[12] כן נזכרתי מה ששנוי[13] בתורת כהנים (פ' בחקותי הוצ' וויס ק"א ע"ד) ונתתי[14] הודאה למקום שזיכנו מהיות כראוים[15] לתוכחות[16] ששנינו בפרשת התוכחה (ויקרא כו' כ') ותם לריק כחכם יש לך אדם שמשיא את בתו ופסק ונתן לה ממון הרבה[17] ולא הספיקו שבעת[18] ימי המשתה לצאת עד שמתה בתו נמצא מפסיד[19] את בתו ומאבד[20] ממונו ואשרינו שלא נעמוד[21] באותה גזירה וכשם[22] שיצאנו מזאת כך נצא מכל גזירות רעות ונתבשר בשורות טובות שלום[23] על ישראל.]

ופויטו ואניו וטרמנדיא. יא. צרפת פייטוב ואניוב נרמידאה. יב. צרפת פייטוב ואניות נרמיניאה נג. סביב פוויטו אניוב נורמנדיאה. ד. צרפת ונורמנדיאה ואניו ופוייטו.

1 מה] נא. נב. נג. חוץ ממי.

2 שקפץ] מי שפסק.

3 האשה] נא. נב. נג. האיש.

4 ויאכל הלה] נא. נב. נג. יאכל הלו.

5 לדבר זה שנה] נא. נב. נג. שנה לדבר זה.

6 שנתה] נד. שנת' נשכח מן הלב מה שנתן. ד. שנתה נשכח מן הלב. יא. יב. יד. שנתן נשכח מן הלב מה שנתן.

7 לא... עצב] ב. ד. ואין שום עצב.

8 בה] מ. עמה.

9 וחתמנו] מ. <ואל יעמיד שום אדם פנים נגד גדולי הארץ אך אם יאמרו עלה לדוכן יעלה ויהיה מן המרבים שלום בעולם>.

10 יעקב... פרץ] יא. יב. יד. נד. ב. ד. מ. ל'.

11 פרץ] נב. סין.

12 אחרי כן] ב. ד. אחרי לכת שליח זה. מ. אחרי עדות הלו.

13 ששנוי] ד. (בפרשת תוכחה).

14 ונתתי... התוכחה] ב. ד. ל'.

15 מ. בראוים. נד. בראויין.

16 לתוכחות] מ. <ותם לריק מהצטער בדבר ברדפו קול נדף בנשיבת עלי אלנח>.

17 מ. גדול.

18 שבעת... לצאת] ב. לעבור שבעת ימי המשתה.

19 יא נד. הורג. וב. קובר.

20 ומאבד ממונו] א. ומפסיד את מעותיו.

21 נעמוד] מ. באנו.

22 וכשם... מזאת] נד. ל'.

23 שלום על ישראל] ב. יעקב ב"ר מאיר ד. יעקב בר מאיר נ"ע, יצחק בר ברוך ז"ל. מנחם בר פרץ ז"ל. מ. כמדומה שזה לשון ר"ת או אחד מתלמידיו ז"ל. יעקב בה"ר מאיר. יצחק ב"ר ברוך. מנחם בר פרץ.

TRANSLATION

Following the example set by the community of Narbonne, we the inhabitants of Isle de France, Anjou, Poitiers, and Normandy have bound ourselves to obey the following ordinance by a severe oath;

1. That if a man marries a woman and she then dies within a year of the marriage without being survived by any permanent issue, he shall return to the giver of the dowry or his heirs, all that is left of his wife's dowry or her jewels;[1] and her husband shall not designedly consume them if the wife falls sick; but from whatever is left, he shall pay for her burial expenses, and he shall provide a funeral in accordance with his station and his desires. He must return the dowry within thirty days if a demand is made for it. But if no demand is made for it, the *herem* shall not take effect. In no case shall it take effect unless he fails to return it within thirty days after the demand.[2]

[1] This Takkanah is not without precedent in Talmudic law. We read in Jer. *Ketubot* 9.1: R. Jose says, that if one writes in the *Ketubah* 'if the wife should die without children, what is hers shall return to her father', that is a contract in regard to money matters and is therefore valid (although it is not in accordance with the law). The passage is quoted with slight variations in a responsum of R. Solomon ibn Adret (6.254) and in Res. Maim. *Ishut* 55.

[2] The French custom was that only the wife received dowry from her family. In Germany it was customary for the father of the new husband as well to contribute to the household of the new couple. (Comp. RMP 285, 985, RMC 93, RMR 327, HOS 2, RFL 30, *Hagahot Mordecai*, *Ketubot* 287). This was due perhaps to the fact that German boys married so early (Comp. Res. R. Mordecai Yaffe published in Res. R. Meir Lubin, no. 123). Perhaps it was also due in part to the custom that developed in Germany of having the young men study after their marriage. It was all the more necessary, therefore, that they should have some capital with which to do business. It may be too that the custom of studying after the marriage was the result of the early marriages. However that may be, the result was that in Germany it was considered proper for the wife, on the death of the husband, to return to the family of her husband half of such goods as he might have gotten from them on his marriage, even though that did not leave her enough to cover her *Ketubah*. There must have been cases, of course, even in France of husbands receiving large gifts from their families. In one such case when the husband died without issue within a year after the wedding, his family tried to obtain the return of their gifts.

2. We have further decreed that the bridegroom shall not demand the payment of the uncollected portions of the dowry, in case of the death of the wife, even though she have lived with him a full year, and even though she be survived by a child.[1]

3. This ordinance have we accepted upon ourselves, the inhabitants of Troyes and Rheims, and we have sent messengers to those who were within a day's journey and they rejoiced in the ordinance. We have therefore decreed a *herem* over ourselves and all those who join us, and our children, and over all the inhabitants of Isle or France, Anjou, Poitiers, Normandy, and those who live about these settlements, within the distance of a day or two, and over their children to maintain the above decree; for who shall enjoy and partake of the gifts of the father or of him who gave the woman in marriage, after the death of the woman, save the giver? We have seen fit to limit the time to one year, for after a year the matter is forgotten and the sorrow is not increased because of the loss of the money.

Jacob b. Meir Isaac b. Baruch Menahem b. Perez

(After[2] this I recalled what is taught in *Torat Kohanim* and I gave thanks to God that he saved us from being among those who aré deservant of rebuke. For we read in the chapter of the Punishments, "and your strength shall

They invoked the Takkanah of R. Tam. R. Azriel b. Yehiel, who was judge, denied that R. Tam could have had such an extraordinary case in mind. (*Mordecai Kiddushin* 551). For the German Jews the matter was settled at a synod held under the presidency of R. David of Muenzberg (see p. 58).

[1] This section merely established as an ordinance the principle which R. Tam regarded as Talmudic law. See *Tosafot*, Ket. 47a.

[2] As has been stated in the prefatory note, this section is found in the S recension before the signatures. An extended version of it is given in C, concluding with these words from some scribe, "Apparently these are the words of R. Tam or of one of his pupils." A shortened form of it is found in P, where, too, it is followed by the name of R. Jacob b. Meir. It is evident, however, from the text itself, that it is only an addition, or a covering note. Furthermore, it appears from *Tosafot* Ket. 47b, that this baraita from the *Sifra* was originally quoted in disproof of R. Tam's statement.

be spent in vain",[1] and the Sages apply that verse to one who gives his daughter in marriage and gives her a large dowry, and then she dies within the wedding week. It then appears that this man has lost both his daughter and his money. Happy are we that we are no longer subject to that evil. Just as we have escaped that evil, so may we be saved from all others, and may we hear good tidings, peace for Israel.)

TEXT C. ABANDONMENT

The following Takkanah was first published by Guedemann (I. 263). I have compared the text as there printed with that of a copy of it made from the original Ms. (Halberstam cod. 49, Hirschfeld 130, fol. 54a), and with that given in the responsa collection *Binyamin Zeeb* 64 (יב).

TEXT

תקנת ר"ת על הנשים שלא תתעגנה[2] ולא יניחום בעליהם על לא דבר.

קול שועת בת עמי ממרחק שמענו וינועו אמות הספים מקול הקורא אנחנו צעירי הצאן שבפריש ועל רבותינו שברומא[3] תלינו צוארותינו להסכים עמנו לגדור פרץ לישר העקוב אם יסכימו לגזירתינו גזירתנו קימת.

1. גזרנו בהסכמת אגרת אחת המובאה מדרום על כל בן[4] ישראל שלא יניח את אשתו שלא מדעתה בעדים נאמנים יותר משמונה עשר חדש[5] כי אם על פי ב"ד העיר הקרובה.

2. ואלו שמונה עשר חדש[6] לא נתנו אלא ליוצא להשתכר מתוך הדחק ויש שלו' ביניהם.

3. ולא יהא אדם רשאי לשהות שלא מדעת אשתו [אם] לא בהתרת שבעה מטובי העיר אשר תבוא צעקתם[7] והם יתירו לאיש כפי הנולד וכפי צורך השעה[8] לצורך האשה לגבות חובותיו ולצורך לימוד וכתיבה וסחורה כדי לפרנס אשתו ובניו.

4. ובחזרתו צריך להיות עמה ששה חדשים.

5. אבל מתוך מריבה ולב רע לא יניחנה כי אם על פי ב"ד.

ועוד גזרנו שישלח האדם לביתו ולבניו די מחסורם לפי השנת ידו

[1] Lev. 26.20, and *Sifra* ad. loc.

[2] יב. תעגנה.
[3] יב. שברומי.
[4] יב. בר.
[5] יב. מ"ב חדש.
[6] יב. הי"ב חדש.
[7] יב. זעקתם.
[8] יב. מהשעה.

מידי ששה חדשים ולפרוע על פי ב"ד מה שלוו לצורך פרנסה ולתלמוד תורה כאשר פרשו רבותינו בכתובות (נ' א').

6. ואם יש לו יניח להם ספוק הראוי להם בפני עדים כשרים.

7. וגזרנו על האדם[1] שלא יערים לצאת אם אין דעתו שלמה לאשתו ועל איחורו שלא יתעכב יותר מששה חדשים אחר הזמנת הקצינים שבעירה או בעיר הסמוכה לה.

8. ואשר לא יקים גזיר' זו בארור ובאלה,[2] לא יארחוהו בני אדם ולא יאכסנוהו.

וגזירה זו נתקנה בספר תורה בתרי"ג מצות אם יסכימו רבותינו שברומא ואשר יתקנו יהיה מתוקן.

וכת' ר"ת הגזרה הגונה וגזרה קדמונית היא ואנו מסכימים אחריה תמיד על פי רבותי' שבצרפת כי גדול השלו'. יעקב ב"ר מאיר.

TRANSLATION

(Omitting the first paragraph, the text may be rendered as follows:)

1. We have decreed in consonance with a letter which we have received from Dreux that no one shall be permitted to leave his wife for more than eighteen months[3] without permission of the Court of the nearest city, unless he receive the consent of his wife in the presence of proper witnesses.

2. We have permitted the absence of eighteen months only to such as leave out of necessity to earn and provided the husband is at at peace with his wife.

3. No one may remain away from his wife against her will unless the Court of Seven Elders before whom the matter is taken permit the continuance of his stay. The Court may give the husband permission to remain absent according to the circumstances, for example if he must collect his debts or if he is engaged in study or learning to write or he is engaged in business.

4. When the husband returns from his journey he must

1 יב. על כל בר ישראל.

2 יב. ובאלה יהיה.

3 In *Binyamin Zeeb* the reading is "twelve months". That was also the reading of R. Aaron Ha-Kohen of Lunel (See *Orhot Hayyim*, II p. 103). On the other hand R. Isaac of Corbeil (*Semak*, section 285) has the reading "eighteen months". See also the variant readings in the codified Takkanot below p. 213.

remain at home for no less than six months before undertaking a second journey.

5. But in no case may one forsake his wife as the result of a quarrel or with bitter feelings, but only with the consent of the Court in the manner described. Each man must send his wife the means for her livelihood every six months. He must make payment through the Court for whatever debts were contracted in his absence in order to maintain his family and give his children their education in accordance with the law of the Talmud (*Ketubot* 50a).

6. One who is able to do so must before leaving on a journey give his wife sufficient means for the support of the family.[1]

7. We have decreed that no one shall evade the law and leave unless he is sincerely attached to his wife, and no one may refuse to return home after being summoned by the Court of the city in which his wife resides,[2] or the Court of the nearest city, if there is none in that city. He must return within six months from the time of the call.[3]

8. Anyone transgressing this ordinance shall be refused hospitality and shall be excommunicated.[4]

This decree was enacted "with a scroll of the Torah and the 613 commandments" and it will stand effective if aproved by our masters.

R. Tam wrote that it is a proper decree and in accordance with ancient custom and "we agree to it in accordance with the view of our masters in France."

[1] *Ketubot* V. 7, where the amount one must give one's wife is fixed.

[2] It is likely that the summons under which Kalonymos b. Kalonymos was recalled from Rome (*Mahberet Immanuel* 23) was issued under a similar Takkanah.

[3] Among the responsa of R. Solomon Luria (55) there is one letter which he sent to a man urging him to return home. In it he refers to the Takkanah as one of R. Gershom's. I have, however, been unable to find any other source for that ascription.

[4] R. Samson b. Abraham (d. 1215) upbraids a correspondent for asking permission to leave his wife in order to carry out a vow to visit the Holy Land. In spite of R. Samson's devotion to the land of Israel, where he ended his days, he felt that the husband's first duty was that to his wife and while he does not mention this Takkanah he maintains the principle it established (*Hag. Maim. Shebuot*, 8.6).

CHAPTER V

CODE OF TAKKANOT OF R. TAM

TEXT A. PRIMARY RECENSIONS

Just as we have a compilation of Takkanot which is ascribed to R. Gershom (chapter I) so we have a compilation of Takkanot ascribed to R. Jacob Tam. There were available in the preparation of the texts given below, three primary and three secondary recensions of these Takkanot. To deal first with the primary recensions, which are printed below in parallel columns, both in the Hebrew original and the English translation, they are taken from the Munich Talmud Manuscript (M. Heb. ב) the Maharil (J. Heb. ז), and the *Kol Bo* (K. Heb. ה). Of the Maharil version we have used three texts; 1. that printed קובץ דברים נחמדים; 2. the Maharil manuscript of the Library of the Jewish Theological Seminary; 3. the Bodleian manuscript, Opp. 225, Neubauer 970.

It is to be noted that in only one case does a section occur in one of the recensions without a corresponding section in another. The exception is section 3M which corresponds (as can be seen from the text or translation) to 1K, but has nothing corresponding to it in J. Thus, M and K have fourteen sections each, while J has thirteen sections. They are not all in the same order, however, as a cursory examination will show.

Moreover, there are some sections of the text which certainly are not by R. Tam. Thus M1, which prohibits the reviling of a repentant convert because of his forced conversion is mentioned by Rashi as Takkanah of R. Gershom (RFL 21). The Takkanah against renting a house from a Gentile after a Jew had been evicted therefrom is generally ascribed to R. Gershom (See for example, below, p. 305). The *herem* against reading

another's letters is an ordinance which is popularly believed to have been instituted by R. Gershom, witness the formula that was used on letters to prevent anyone but the addressee from reading them ופנין בחדר"ג "forbidden under the *herem* of R. Gershom". While such evidence is not as a rule conclusive, it is hardly likely that a Takkanah of R. Tam would be ascribed to R. Gershom. A further scrutiny of the texts will show that while M1 forbids the acceptance of church vessels from Gentiles as security for debt, the corresponding section in J (7) and in K (11) forbids rather the buying of such vessels. It would thus appear that the original text from which the three before us are sprung contained no paragraph dealing with church vessels.

It will be noticed too that the variations in the order of the Takkanot in the various texts are caused by the irregular insertion of the paragraphs just mentioned. Without them there would be left ten sections (J having only nine) arranged in precisely the same order. They would be as follows:

a. Right of jurisdiction.
b. Exceptions to the *herem* against compulsory divorce.
c. Interruption of the prayers.
d. Transgressing the *herem* of a Court.
e. Giving the "tithes".
f. Not to remove a *Tallit* or *Mahzor*.
g. Not to strike one's neighbor.
h. Not to cut the margin of a book.
i. The law of summons.
j. Providing for abandoned wives.

It will be seen that as far as form is concerned, the compilation as we have reduced it would fall into three parts: Part I, (sections a–e), dealing with various communal matters and arranged more or less in the order of the first sections of the Takkanot of R. Gershom, as we will see presently. Part II, (sections f, g, and h) various prohibitions. Part III, remaining sections i and j. If we accept the theory that the four sections not included in this list

are interpolations, we will find corroboration for our view in the fact that they were inserted in practically every case before one of the subdivisions.

The four interpolated sections are:

k. regarding apostates.
l. regarding the renting of houses from Gentiles.
m. regarding Gentile holy vessels.
n. regarding the reading of other people's letters.

In M, *k* and *l* are inserted as sections 1 and 2 before Part I, while *m* and *n*, are inserted as sections 11 and 12 before Part III.

In J, *l* and *n* form sections 1 and 2, being inserted before Part I, while *m* is inserted as section 7 before Part II, and *k*, as section 11 before Part III.

In K, section *k*, *m* and *n* are inserted before Part III. The insertion of *l* as section 4, may perhaps be accounted for on the ground that the writer thought it in some manner connected with the matter of defamation.

It is of course peculiar that the four paragraphs inserted into the three texts should be so nearly identical. Yet the above arguments, that the excision of the four paragraphs which are suspicious on other grounds would leave a basic text which is practically the same in the three versions, seems convincing. The original Takkanot of R. Tam were then ten in number, and those marked a, b, c, d, e, f, g, h, i, j, in the text printed below.

There are several conjectures regarding these ten Takkanot which are offered with diffidence since they rest on no certain proof. It is, nevertheless, thought best to present them.

It should be noticed that the arrangement of the Takkanot in the first part is peculiarly reminiscent of the order of the paragraphs in the Takkanot of R. Gershom (above chapter I). If we assume that the paragraph regarding the *herem* against bigamy was introduced into that text before the time of R. Tam, the two lists are all but parallel for the first six Takkanot.

TAKKANOT

of R. Gershom	*of R. Tam*
1. Jurisdiction of the Court.	Jurisdiction of the Court.
2. Release of the *herem* against bigamy.	Exception to the *herem* against compuslory divorce.
3. Interruption of Prayers.	Interruption of Prayers (and defamation).
4. Letting out a synagogue.	
5. Proclaiming *herem* to obtain lost article.	Compelling all to obey *herem*.
6. Ordinances for the poor and other ordinances.	Giving of the tithes for the poor.

If we accept this as a true parallelism, there can be no doubt that R. Tam framed his ordinances on the basis of those of R. Gershom. It will then corroborate our view expressed above (p. 144) that the section regarding the release of the *herem* against bigamy is of French origin and was later inserted there into the Takkanot of R. Gershom. For in France this section was known before the time of R. Tam, while the German synod sitting at Mayence some time after 1220, did not yet have it in its text.

Moreover, we may conclude from the fact that R. Tam arranged the compilation of his synod in ten sections, that he had the example of R. Gershom before him in that as well. Perhaps he considered section 8 and 9 of the Takkanot of R. Gershom a unit, and therefore counted ten including the spurious section regarding bigamy.

The particular ascription of one Takkanah to R. Tam in J and K (sections 9 and 8 respectively) cannot militate against the genuineness of the ascription of the whole text to the scholar, since he is not mentioned in the corresponding section of M (9). The reason that particular mention is made in J and K of the authorship of this section is that it was not generally acted upon by judges. The scribe was led to emphasize its authorship, so as to give it greater authority.

While M is here, as in the Takkanot of R. Gershom, the oldest source it is not free from accretions. The four inserted paragraphs are found in it as well as in the other texts. Moreover, section 14 shows evidence of no longer being in its original state. It was intended doubtless as legislation concerning men who abandoned their wives, and is supplementary to the famous Takkanah of R. Tam against abandonment, (See above chapter IV, Text C, p. 167). But later a provision was added extending its effect to compel the husband to support his wife when he was in the city.

The relation of the various recensions cannot be established with any degree of certainty on the basis of the material at present available. None of the texts before us is a direct copy of either of the others. Moreover each has developed in its own way, so that their relationship to one another is obscured. The original from which they all are derived cannot have contained the four additional sections, *k*, *l*, *m*, *n*, since it is the position of these very sections in the respective compilations that mark their greatest difference. On the other hand, it is strange that the three of them should be independently have made the same additions. Thus a number of questions regarding these texts must for the present remain unanswered.

TEXTS

ב	ז	ה
אלו תקנות רבנו יעקב שנקרא רבנו ת"ם		
1. שלא להזכיר פשעו לבעל תשובה.	11. ושלא לבייש בעל תשובה מעוונו.	10. ושלא לבייש בעל תשובה מעונו בפניו.
2. שלא להשכיר בית גוי שישראל דר בה עד שנה תמימה.	1. עוד מסור[1] לנו חרם קדמונים שאם דר יאובן בבית גוי בשאלה או בשכירה[2] אין ביד שמעון	4. גם מהתקנות שלא לשכור מגוי בית שדר בו חברו בלא רשותו עד מלאת לו שנה אחר

1 זב. נמצאת(?) בידינו.
2 זב. בשכירות.

ב	ז	ה
	לשכרו בלא רשות[3] ראובן עד שנה תמימה אחר שיצא ראובן מאותו בית ודוקא בבית גוי אבל בבית ישראל אינו כן.	יציאתו. אמר הדר לגוי שכרהו לי בפחות ששכרה כבר ולא החלו הבתים בשכרותם ולא אמר אמתלא למה הוא רוצה לפחות השכירות ובא אחר ושכרה בשומא שנה שעברה או ביותר אין בזה תקנת החרם.
3. מקום שדר בה רב ג[דול] מקדם מסתמא יש שם חרם בית דין ודנין שמה.		1. ואומרים הגדולים כי מקום שנכר שהיה שם אדם גדול בעיר מאז מסתמא יש חרם מב"ד ודנין אותה כן.
4. אדם שגרש אשתו בעל כרחה ונשאת האיש פטור ואינו נקרא ע[ברין] נתן לה גט מרצונה ונמצא פסול יכול לחזור ולגרשה בעל כרחה.	3. עוד החרים שלא ינרש אדם אשתו בעל כורחה ואם עמד וגרשה בעל כרחה ונשאה[4] איש לא נקרא עברין.	2. ואם נתן גט לאשה בעל כרחה ונשאת האיש פטור ואינו עברין נתן גט מרצונה ונמצא פסול יכול לחזור וליתן לה בעל כרחה.
5. אדם שמתיירא פן ילשינוהו יכול לעכב תפלת מנחה ויוצר ואף בשבת עד שיעשו לו דין ויכול ל[הכריח] המלשין בכח חרם שיאמר לו מה שאמר אל המושל.	4. אם ירא אדם שמא ילשינו עלי[ו][5] במרוצה[6] יכול לבטל תפלת יוצר ומנחה עד שיעשה לו[7] דין ויכול להכריח בכח חרם שיאמ' לפני טובי העיר מה שאמר לפני המושל ויסלקנו ולא יאמר אלך לב"ד.	3. ואם ירא האדם פן ילשינו אותו במרוצה יכול לבטל מנחה ואפי' בשבת וי"ט עד שיעשה לו דין. מלשין יכולין להכריחו בכח חרם לומר מה שאמ' לפני טובי העיר ואם נראה להם שיש לו לסלקו מיד יסלקנו ולא יאמר אלך לב"ד.

3 זב. שלא ברשות.

4 זב. ונשא' האיש פטור ואינו נקרא עברין.

5 זב. אותו.

6 זב. וכן למסור כשר יחיד או קרוב ואם באומד הדעת אין נאמנין על המסור שאין שופעין על המסור שהלשינו אך רואין שמדבר לטושל ואיך צוה המושל על הנלשן או שום אמתלא אחרת.

7 זב. המלשין.

ב	ז	ה
6. העובר על חרמות בית דין להכריח העבריין לתקן.	5. העובר על חרמות על בית דין להכריח העבריינין[8] לתקן. גם[9] מלסרב שלא יכנס בחרם.	5. והעובר חרמות על ב"ד להכריח העברין לתקן המעוות ושלא ליסרב.
7. להכנס בחרם להביא המעשר אל בית האוצר .....חדש אחד בעיר. אנשי העיר שאין להם לעשות צדקה מכריחין אחרים שיש בידם לעשות צדקה ובלבד שלא יהו גב [אים].	6. הביאו[10] המעשר אל בית האוצר לאחר שדר חדש בעיר. מי שאין לו לתת[11] בעולי העיר יכול[12] להכריח אחרים בלבד שלא יהא גבאי.	6. ליכנס בחרם להביא המעשר אל בית האוצר רק שעמד בעיר חדש ואחד יכריח את כלם אם יש מנין בעיר רק שלא יהיה יחיד המכריח את כלם מקבל צדקה. ומי שאין לו לשים בעולין אשר בעיר יכול להכריח אחרים אך לא יהיה גבאי.
8. שלא להצי' טלית ומחזור מבית הכנסת שלא ברשות הבעלים.	8. שלא יוציא אדם טלית או מחזור מבית הכנסת שלא ברשות בעל הבית[13].	7. ושלא להוציא טלית או מחזור מבית הכנסת בלא רשות בעלים.
9. שלא להכות חברו ואם הכהו אין מתירין לו עד שיעשה או יקבל עליו לע [שות] גזת (אולי צ"ל גזרת) בית דין קנס המכה חברו עשרי' וחמש' דינרין ובבית הכנסת חמשים ואם חזר והכהו אבד את זכותו נשים וקרובים נאמנים בדבר זה ובכל דבר [קטט]ה שאין רגיל	9. חרם קדמונים שלא להכו' חבירו והמכה קודם שיהא נמנה בעשרה מתירין לו החר' ע"מ לקבל עליו לעשות לו ב"ד[14] ותיקן ר"ת על המכה חבירו ליתן לו כ"ה דינ'. ואם הכהו בב"ה נ' דינר' ק"ו[15] לשכינה י"ד ואם המוכה חזר ומכה חברו איבד	8. חרם קדמונית שלא להכות חברו ומתירין לו החרם קודם שיתמנה בעשרה על מנת שיקבל עליו לעשות צואת ב"ד או מה שיעשו [צ"ל שיענשו] טובי העיר ותקן ר"ת על המכה כ"ה דינר ונ' דינר כשהכהו בבית הכנסת חזר מוכה והכה מכהו אבד זכותו. ואשה

8 זב. העבריין.
9 זב. גם להכריח מלסרב.
10 זב. להביא.
11 זב. לשים.
12 זב. יש.
13 זב. בעלים.
14 זב. או ראות עיני טוב העיר.
15 זב. ק"ו...י"ד ל'.

ב	ז	ה
להיות שם עדים וכן למסור ואף מאומד נאמנין עליו שהרי לא היו שם עדים כשהלשין.	זכותו ואשה וקרובים[16] נאמנים על דבר זה וכן בכל דבר[17] קטטה שאין רגילות להיות עדים בדבר מזומנים וכן למוכר ואומר מאומר[18] נאמנים לפי שבהלשין[19] לא היה שם עדים.	וקרוב נאמנין בזה הדבר וכן בכל קטטה שאין שם אנשים להיות עדים מזומני' בדבר פתאום וכן מסור ואף משומד נאמני' עליו לפי שאין שם עדים כשהלשין.
10. שלא לקרוע גליון ספר אפילו לכתוב עליו.	10. שלא לחתוך גליון ספר לכתוב[20] עליו.	9. ושלא לקרוע גליון ספר לכתוב.
11. שלא להלוות על כל משמשי עבודה זרה.	7. שלא ליקח גיבת גביע ותועיבה ובגדים צואים וספר תפלות ע"ז וכל משמשיה משום סכנה.	11. ושלא ליקח גביע או תועבה או בגדים צואים או ספר תפלות תועבה ומשמשיה.
12. שלא לראות בכתב חברו.	2. אומר שיש חרם קדמונים שלא לקרות כת' בלא רשות[21] בעל הכתב[22].	12. ושלא לראות בכתב ששולח אדם לחברו בלא ידיעתו ובלא רשותו.
13. אין צריך ללכת בעיר רחוקה לרב גדול אלא בעיר הקרובה לתובע וההזמנה שילך לאחת משלש עיירות הסמוכות שיש שם [חרם] בית דין ואם יש שם חשוב קרוב לא יסרהב להזמינו וההזמנה שילך לאחת משלש עיירות הסמוכות אם הנתבע בישוב השליח	10. תקנת הקדמונים שיעשו הזמנות בעיר הקרובה לתובע ולא ילך לרב גדול למרחוק ולא יסרב החשוב לעשות הזמנה.	13. ותקנת חרם קדמונית שיעשו דין בהזמנת העיר הקרובה ולא יצטרך לילך למרחוק לרב גדול ולא יוסיף להוסי' [צ"ל להוציא] מנה על מנה והזמנה [צ"ל וההזמנה] שילך לאחת מג' עיירות שיש שם ב"ד. ואם חשוב הקרוב ילכו לחשוב ואם

16 זב. או קרוב.
17 זב. ליתא.
18 זב. וכן למוסר מאומד נאמנים.
19 זב. שכשהלשין היו שם עדים.
20 זב. ואף לכתוב.
21 זב. שלא ברשות.
22 זב. ואם זרקו מותר.

ב	ז	ה
נאמן כשני עדים לומר שהזמינו.		[צ"ל ואל] יסרב החשוב לעשות הזמנה ואם אין הנתבע בישוב השליח נאמן שהראה לו ההזמנה כשנים.
14. ואם אין אדם בעיר או הוא בעיר ואשתו תובעת מזונות יחרימו על כל היודעים ואף פקדון ויפסקו לה מזונות.	13. ואדם[23] שהוא בעיר ואשתו מבקשת מזונות או אפי' אין בעלה בעיר נכון להטיל חרם על כל היודעים משלו ואפי' פקדון ויפסקו ב"ד לה מזונות על מה שימצאו וכ"ש שיקבל הבעל חרם ממה שיש לו בידו.	14. בעל בעיר ואשתו שואלת מזונות או אינו בעיר יטילו חרם על היודעים משלו ואפילו פקדון ויפסקו לה מזונות על אלו וכל שכן שיקבל הבעל החרם. נשלמו התקנות הגונות מבעלי תרומות שבח לדר מרומות.

TRANSLATIONS

K	J	M
		These are the Takkanot of R. Jacob who is called R. Tam.
10. Not to put a repentant to shame because of his sins.	11. Not to put a repentant to shame because of his sins.	*k*. 1. Not[1] to mention his sin to a repentant.[2]

23 זב. כל הסעיף חסר.

[1] This Takkanah is mentioned by Rashi, the grandfather of R. Tam, as being one of the ordinances of R. Gershom (RFL 21). This disposes of the genuineness of its ascription to R. Tam. But as we have seen in the preface to these Takkanot, the section is in all likelihood a later interpolation of an early Takkanah into a compilation of R. Tam. The fact that the language of M differs from that of J and K also tends to show that the Takkanah was inserted into the various texts at different times.

[2] Compare also *Takkanot Shum*, section 23 below p. 230. It will be seen that the main difference between the ordinance before us and that of the Rhine communities is this: theirs deals with reviling a person because of alleged low birth; the one before us, with referring to a man's conversion after his return to the fold. The two are not to be confused. The Takkanah against calling one a bastard is nowhere ascribed to R.

Gershom. It is a "custom of the ancients", a *herem*, a Takkanah, but never, at least in early sources, an ordinance of R. Gershom. I find no reference to such a Takkanah in French sources. It seems to have been a special ordinance of the Rhine communities. That is what we would naturally understand from the statement in *Or Zarua* (quoted RMB p. 72) that it was "the ancients in the Rhine communities that said there is a *herem* against the slander of the dead". This refers to an allegation of illegitimate birth, since it involves moral turpitude on the part of the deceased. It seems indeed tha R. Isaac *Or Zarua* knew of no other *herem* in regard to slander. For we read in a responsum of his (*Or Zarua* I. 751) that "regarding a person who says to another 'You deny the resurrection', or 'You are a rebel against the whold Torah', even in this case have I heard of no *herem*; for there is only a *herem* against slander affecting one's birth as when one calls another 'bastard', or 'slave'". This passage need not preclude the existence of a *herem* against calling someone "Convert". But that interpretation must be set aside in view of the information that we have from his grandson, R. Isaac b. R. Hayyim *Or Zarua* (Res. 69). He says, "For thus did my grandfather of blessed memory, write: there is no *herem* except in matters involving defects of birth; but if one accuses another of denying the resurrection or of being a convert, there is no *herem*; for that does not imply any aspersion on the legitimacy of his children, except that they are disgraced by being the children of a convert.

It is clear than that the objection against attacking the legitimacy of someone's birth was twofold. First it implied a sin on the part of those that had departed. Second it involved disgrace on generations yet unborn. R. Meir b. Baruch tended to emphasize rather the first aspect of the matter (RMP 132, Mord. *Baba Kamma* 8.105), R. Isaac *Or Zarua* emphasized the second.

Far different from these was the Takkanah of R. Gershom which we have before us, and of which, as we have seen, R. Isaac *Or Zarua* knew nothing. It forbade the reviling of a repentant convert because of his former sins. Therein it but followed the law of the Mishna (*Baba Mezia* 4.9). But the importance of the Takkanah was that it was no longer a moral maxim as in the days of the Mishna but an essential for the proper continuance of Jewish life. For there were among the Jews, many who had forcibly been torn away from the fold. If they were made to feel that their forced conversion to Christianity had placed them forever in an inferior position in the camp of Israel, many would naturally be led to remain with the majority and be lost to their people. R. Gershom, therefore not merely out of humanitarian considerations but because of the welfare of Israel forbade the mention of their sin to these unfortunates. The ordinance is widely quoted, see RFL 21, *Hagahot Mordecai, Baba Kamma* 8.21, *Yam shel Shelomo, Baba Kamma* 8.55.

M

l. 2. Not to rent[1] for a whole year the house of a Gentile in which a Jew has lived (after the removal of the Jew[2]).

J

1. We have further received a *herem* of the ancients that if a Jew lives in the house of a Gentile whether for rent or as loan, no other Jew may rent the house for a whole year after the first Jew's removal from the house. This ordinance applies only to the house owned by a Gentile but not to that owned by a Jew.

K

4. It is also one of the Takkanot that one may not hire from a Gentile a house in which a Jew has lived until a year has passed after his removal. If the (former Jewish) tenant said to the Gentile, "Rent the house to me for less than I have been paying," and the houses have not become cheaper and he gives no reason for desiring to decrease the rental and another came and hired the house for the same rental as was paid the past year or more, there is no *herem* in the matter.

[1] The expression here used for renting (להשכיר) is grammatically wrong. We should expect the *Qal* rather than the *Hiphil* or *Causative*. But the Hebrew of the text before us is not above reproach. The use of the Causative for the Simple verb is usual in the responsa of R. Benjamin b. Mattathias (lived at Arta, first half of the sixteenth century.) Indeed he quoted our ordinance with that grammatical inaccuracy (Res. 404).

[2] The economic importance of this Takkanah has been studied in Part I. p. 31. The refinements introduced by the later compilers are at least not repugnant to the spirit of the Takkanah. In PD the Takkanah is extended to forbid the hiring of houses which had been loaned to a fellow-Jew without pay. The second Jew is not forbidden to accept a loan of the house on the same terms as his predecessor. That would not help the former tenant and would not harm the owner. To refuse it would merely mean a vain sacrifice on the part of the second Jew. That is also the view taken by R. Meir b. Baruch (RMP 661).

M	J	K
a. 3. In[1] a place where a great Rabbi lived in former times we may assume the existence of a *herem Beth Din* and one must stand for trial there.		1. The "great scholars" say that any place which is known to have been the habitation of a great man may be assumed to have the *herem Beth Din* and one must so regard it.
b. 4. If a man divorces his wife against her will and she marries thereafter, he is free and is not called a	3. Furthermore did he ordain that no man shall divorce his wife against her will[2]; if one did di-	2. If a man gives a writ of divorce to a woman against her will and she is then married again, the

[1] This section is mentioned in K in the name of "the great scholars". In the secondary recensions (P and L) printed below, it is given in the name of the "Rabbis of France." The law of jurisdiction here laid down, had an interesting development both in the Talmud and in Post-Talmudic writings, regarding which see Additional Note on page 379.

[2] This Takkanah against compulsory divorce is added in J, but it is quite unnecessary since we are dealing here only with ordinances of R. Tam and not with those of R. Gershom. In the secondary recensions (below p. 193) the statement is added that if the writ was delivered against the will of the wife "it is nothing". Just what is meant by this expression is not clear, since in the very next sentence we are told that if the wife marries the husband is free from guilt. The reason inserted by the writer of L and PD is that by her marriage the wife has shown that she accepted the divorce willingly. This is evidently a fiction and can only be upheld as such. For it is obvious that while a woman may have received her writ of divorce quite unwillingly, months or perhaps years of separation may have made her resigned to the inevitable. The phrase probably means that the writ is without force in that is does not permit the husband to marry a second time so long as the woman remains unmarried. The question of the power of a Court to annul bills of divorce and marriage does not arise here at all. As is well known that formed the subject of a famous controversy between R. Joseph Colon and R. Moses Capsali. R. Joseph held that while the Sanhedrin in Jerusalem did have the right

M	J	K
,'transgressor". If he gave her a writ of divorce with her consent and it is found to be invalid he may divorce her against her will.[1]	vorce his wife against her will, and then she was married, he is no longer to be regarded a transgressor.	husband is free and is not a transgressor. If he gave her the writ with her consent and it is found unfit (legally) he may divorce her against her will.
c. 5. If a man apprehends that he will be defamed to the government, he may interrupt the prayers of	4. If a man apprehends that he will be defamed shortly he may interrupt the morning (*Yozer*)	3. If a person apprehends that he will be defamed shortly, he may interrupt the afternoon prayers

to annul marriages no such right inheres in modern courts. In this claim he was successful against R. Moses Capsali who, following good Spanish precedent, attempted to declare marriages that were contracted otherwise than in accordance with the local ordinance, invalid. That matter is not at all involved here. There is no question that the writ had full validity insofar as the wife was concerned; it was void merely to the extent that the husband was not released by it. R. Moses Mintz did not so understand the text before us, and he comes to the conclusion that the writ of divorce is actually invalid. He does not rely on that interpretation, however, to interfere with the ordinary processes of the marriage law. (Res. R. Moses Mintz, 17).

[1] This is not the only exception to the working of the Takkanah against compulsory divorce. In Austria, at least, it was customary for men to deposit in Court writs of divorce for their wives if the latter forsook the Jewish fold (Isserlein, *Pesakim* 256). In such cases the consent of the wife was not required. Nor was it required, according to R. Meir in the special case discussed by him (RMR 245). Similarly it is assumed by R. Simon of Joinville that if a person warned his wife not to have any dealings with a third party and she disobeyed, she might be compelled to accept divorce. For according to Rabbinic law further continuance of married life would be impossible under the conditions. Since the ordeal of the *Sotah* (Numbers, 5.24) had been abolished there was no remedy for the husband but divorce. (*Tosafot Nedarim* 90b, *Hagahot Maim. Ishut* 24.10, RMP 587. *Hagahot Asheri Kiddushin* 3.16). The opinion is however expressed that even in such a case the *herem* of R. Gershom holds and the husband may not divorce the wife (*Semak* 198, *Orhot Hayyim*, II. p. 98).

M	J	K
the afternoon or the morning (*Yozer*), even on the Sabbath, until they do him justice;[1] one may announce a *herem* compelling the defamer to reveal to him[2] what he said to the ruler.	and afternoon prayers until justice is done him. One may announce a *herem* compelling (the defamer) to repeat before the elders of the city what he said to the ruler.	even on the Sabbath until justice is done him. One may announce a *herem* to compel the defamer to repeat what he said before the elders of the city. If in their opinion it is his duty to indemnify the defamed, he shall immediately indemnify him, and not take the matter to Court.

[1] The expression עשה דין is equivalent to the Biblical עשה משפט regarding which see Ginzberg, *Eine Unbekannte Juedische Sekte*, p. 4. It means that the executive authority carries out justice between two litigants. In the same sense we have the Aramaic עבד דינא In K we read עד שיעשה לו דין. Unless that is to be corrected into עד שיעשו לו דין, we must assume that the meaning there is different from the ordinary. Whatever may be true in regard to the meaning of the expression in K, it is certain that in the German texts it means to "give satisfaction", "to do justice" in the sense in which the idiom is used in English and generally in modern languages. In that sense the expression is used in *Takkanot Shum* section 3, text R. (below p. 226) and numberless times in the responsa literature. I mention here amost at random *Maaseh Ha-Geonim*, 80; *Raben Sanhedrin* 13; HOS 248, RMR 334. Finally the expression assumed also a derived meaning, namely "doing penance". It has this significance in *Takkanot Shum* (*loc. cit.*) Text Z, as well as in *Or Zarua* I, iiv where we read in regard to a repentant sinner, אבל אם שב בתשובה הרי הוא צדיק גמור אע"פ שלא עשה שום דין "but if he repented he is already a righteous man, although he did as yet no penance".

[2] As it is generally quoted the ordinance provides that the suspected defamer shall declare in the presence of the Gentile to whom he is accused of having made the denunciation, that he made no denunciation. It was assumed that even if he had given information, the Gentile would perceive how little trust could be put on his words. This law is thus stated in the name of R. Tam (*Or Zarua, Baba Kamma* 10; RMP 383; *Agudah, Baba Kamma* 10). The original Takkanah seems to have been that the informer should tell his victim what he had told the rul-

M	J	K
d. 6. If[1] one transgresses a *herem Beth Din*, he should be compelled to make amends.	5. If one transgresses a *herem*, it is the duty of the Court to compel him to make amends. Neither may one refuse to enter a *herem*.[2]	5. If one transgresses a *herem*, the Court should compel the transgressor to mend his perversity, and not to be obstinate.
e. 7. To[3] come under the *herem* to "bring the tithe to the	6. "To bring the tithe to the treasure house" one need	6. To come under the *herem* to "bring the tithe to the

ing power, so that the victim might plan his defence accordingly. In J and K it is said that this statement must be made before the elder of the city. The thought there is that they will then know what action to take.

[1] The original reading was doubtless to the effect that, "if one transgress the *herem*, the Court is empowered to compel the transgressor to make amends." It referred to the declaration of a private *herem*, such as that regarding lost property, etc. in which there is possibility of naming amends. The misplacing of the word על before the word חרמות produced the confusion.

[2] Even a cursory comparison of the Hebrew texts will show how the confusion resulting in this additional paragraph arose.

[3] It is doubtful whether *Maaser* means actually a tithe or simply the regular percentage given to charity. The word is taken of course from the verse quoted. The Talmudic law provides that one must contribute to the food collection as soon as one has resided in a city for thirty days, to the charity fund after ninety days and so forth. In Germany and France it appears that the charity fund was collected by the announcement of a *herem* against all who would fail to contribute their full allotment. This is the *herem* referred to in the Takkanah. We read in L-P, that before the time of "R. Gershom there was a Takkanah and R. Gershom ordained that it be renewed each year" (See above p. 18). Whether we accept or reject the emendation in L that before the time of R. Gershom the charity tax was one twentieth, it is certain that at other times the tax was not fully one tenth. R. Moses Mintz placed the tax at Mayence at one fortieth (Res. 40). We learn thence, too, that the tax at least in his time and place was payable in monthly instalments and that is was customary later to go about with a closed box into which each one deposited what he thought was one fortieth of his income for the month. From the

M	J	K
treasure house"[1] one must be but one month in the city. Members of a community who cannot give charity may compel others who can afford to give, provided they (those who cannot give) are not appointed treasurers of the funds.	have been but one month in the city. One who is unable to share in the burden of the city may compel others (to give) but he must not be a treasurer.	treasure house" one need have been in the city but one month. If there is a *minyan* in the city, one man may compel all, but that individual must not be a recipient of charity. One who cannot afford to partake in the burdens of a community may compel others to give but he must not be a treasurer.
f. 8. Not[2] to take a *Tallit* or *Mahzor* from a Synagogue without the permission of the owner.	8. No person shall remove a *Tallit* or *Mahzor* from a synagogue without the permission of the owner.	7. Not to remove a *Mahzor* or a *Tallit* from a synagogue except by permission of the owner.

expression "to bring the tithe into the treasure house" we would assume that in earlier times it was rather customary to bring the money to the treasury.

[1] Malachi 3.10.

[2] This is of course not to be understood as an ordinance against stealing. There was no need of a communal ordinance for that. It is rather a limitation on the Rabbinic principle that "one wants to have one's property used in the fulfilment of a *Mitzvah*". (*Baba Kamma* 29b). This was generally assumed to give one the right of using the property of another in such a case. Thus for instance, there could be no possibility of anyone objecting to the use of his *Tallit* by another Jew in praying. It woud not be well, however, to allow one to remove it from the synagogue for the borrower might forget to return it. In a responsum in which the principle is involved (RMP 723) there is no mention of the Takkanah.

M	J	K
g. 9. Not to strike one's neighbor. If one did strike another, no release is to be granted him until he performs or agrees to perform the decree of the Court.[1] The fine of one who strikes another shall be twenty-five[2] dinars and if the quarrel occurred in the Synagogue, fifty dinars. If the assailed turned and struck the assailant he loses his rights.	9. There is a *herem* of ancients not to strike one's neighbor. One who strikes another must be released from the *herem* before he can be counted for a *minyan* on condition that he should undertake to go before a Court. R. Tam ordained that he who strikes his neighbor shall pay him twenty-five dinars and if he struck him in the synagogue fifty dinars. If the	8. There is an ancient *herem* not to strike one's neighbor. The *herem* must be released before he can be counted for a *minyan* only on condition that he undertake to carry out the order of the Court or whatever fine the elders of the city will place on him. R. Tam ordained that one who strikes his neighbor shall pay twenty-five dinars and if he struck

[1] This passage can be best understood in the light of a statement by R. Eliezer b. Nathan (*Raben*, Prague, 113d, quoted RMB 96, cf. RMP. 382). He decides that if "one raises his hand against one's neighbor he is called *Rasha'*, (wicked), and if he is summoned to Court (by his assailant) the Court declares him a *Rasha*." Even if the assailed make no complaint in Court, the assailant is still to be considered a *Rasha'* and therefore unfit to take an oath. So that if the assailant is a litigant in a Court action, his opponent may disqualify him from taking an oath, by bringing witnesses to prove him guilty of assault. The opponent would then take the oath and gain the decision in his favor.

On the basis of these words we can understand the provision that if one strikes one's neighbor one is not to be counted as a member of *minyan* until one has agreed to abide by the decision of the Court. This *herem*, unlike the others, takes effect not after conviction by the Court, but immediately on committing the crime. P adds the provision that if the assailed make no complaint the Community may release the herem without satisfaction on the part of the assailant.

[2] This attempt of R. Tam to set up a fixed schedule of fines did not succeed. See below p. 194. Yet we learn from P that R. Yehiel decided in accordance with the ordinance of R. Tam, and it is somewhat surprising not to find it mentioned in the codes.

M	J	K
Women[1] and relatives are accepted as witnesses in this case and in any matter of contention where it is not usual that witnesses should be present. Similarly for one accused of defamation they are accepted, even though they give only circumstantial evidence since there could not possibly be witness present when the denunciation was made.	assailed person returns the blow, he loses his rights. Women and relatives are accepted as witnesses in this case and similarly in every contention, where it is unusual for witnesses to be present. Similarly in the case of defamation, even one who testifies from hearsay, is accepted since when the denunciation was made no witnesses could have been present.	him in the synagogue fifty dinars. If the assailed returns the blow, he loses his rights. Women and relatives are accepted as witnesses in this matter, or in any contention where no men are on hand as witnesses, the matter having occurred suddenly. Similarly one guilty of giving information or even an apostate is to be accepted as witness since there were no witnesses present when the denunciation was made.
h. 10. Not to tear the margin of a book even in order to write on it.[2]	10. Not to cut the margin of a book to write on it.	9. And not to cut the margin of a book to write on it.
11. Not[3] to accept Church vessels as security for debt.	7. Not to buy a stolen chalice or cross or holy vest-	11. Not to buy the chalice or the cross or holy vestments

[1] R. Joseph Colon quotes this ordinance in two varying versions in a responsum (180). His texts seem to resemble K and P most closely. Recanate (494) ascribes this law to R. Tam, perhaps because he found it in this or a similar text ascribed to R. T.

[2] It was customary to cut the margins of books and to use the vellum thus obtained for writing *Mezuzot*, *Tephilin* or charms. The practice had to be discouraged for often the writing would be cut as well as the margin.

[3] The practice of lending money to Gentiles, especially clergymen,

M	J	K
	ments or prayer books of a Church or any of its vessels because of the peril.	or prayer book of a church or its vessels.
e. 12. Not[1] to read another's letters.	He says (?) there is a *herem* of the ancients, against reading a letter without the permission of the writer.	12. Not to read a letter which a man sends to his fellow except with his knowledge and permission.
13. One need not go to a distant city to a great rabbi,	12. There is a Takkanah of the ancients that a summons	13. There is a Takkanah and an ancient *herem* that a liti-

on a pledge of their sacred vessels and vestments was widespread and at times brought the Jews into serious peril, as is implied in this Takkanah. Comp. Carlebach, *Jued. Gemeinden*, 43, 44. Also Gudemann, I, 24, 130. In the Mishna (*Aboda Zara* 4.2) the practice was prohibited. For the vessel did not, on coming into the hands of the Jew, lose its religious character. It might not be used. The only question which could arise would then be what vessels are used so intimately in worship as to be prohibited. In our text there is no specification of the kind of vessels that are forbidden. But in the others (K and L-P) mention is made of the chalice, the vestments, and books. It is possible with R. Eliezer of Metz (*Sefer Yereim* 70 and 74) to distinguish between buying vessels and accepting them as pledges. But while it is possible that zeal for the law prompted our ordinance in part, we read in the other three texts frank statements that the main cause is the fear of Gentile indignation. So that while R. Eliezer b. Nathan permits from the point of view of law, the lending of money against such vessels and articles as collateral (*Raben* 289, 290) and there is a tendency to be lenient among all the authorities, (See *Tosafot Aboda Zara*, 50a, *Asheri* ad loc., *Mordecai*, *Aboda Zara* chap. 4, beg.) yet that leniency made the Takkanah only the more necessary. It is surprising to find R. Hayyim *Or Zarua* (Res. 175) permitting the lending of money and the accepting of these articles as pledges, without even mentioning the Takkanah.

[1] In modern times it was often invoked by putting on the cover of an epistle בחדר"ג, "forbidden to read under the *herem* of R. Gershom". A similar prohibition in Geonic times is mentioned in *Hazofeh* 5.1. Also *Shilte Ha-Gibborim Shebuot* 4, end. The ordinance has found its way into the code *Birke Josef*, *Yoreh Deah* 334, 16.

M	J	K
but in the city which is nearest the complainant.[1] The summons should call one to go to one of the three nearest cities[2] which have a *herem Beth Din*. If there is a great Rabbi in the vicinity he may not refuse to issue the summons. The summons should call upon the defendant to appear before the Court of one of the three nearest cities. If the defendant is (not?) in a settled community, the statement of the agent of the Court that he delivered the summons is to be accepted as final.	should be issued in the city nearest the plaintiff and that one need not go to a great rabbi afar. Nor may the rabbi refuse to issue a summons.	gation is to be begun by the issuing of a summons in the city which is nearest and one should not be compelled to go afar to a great rabbi and thus incur unnecessary expenses. The summons should call upon the defendant to present himself before one of the three cities where there is a court. If there is a great Rabbi in the vicinity, they should go before him. He may not refuse to issue the summons. The statement of the agent of the Court that he delivered the summons shall be accepted as final if the defendant is not in a settled community.
j. 14. If a man is not in the city (or even if he is in the city) and his wife demands	13. If a man is in the city and his wife demands her maintenance, or even if the	14. If a husband is in the city, and the wife demands her maintenance, or even

[1] This statement is probably the source for the ordinance mentioned in RMP 715, that in "these days they may compel the judges to sit in judgment under the ordinance of the Communities".

[2] The request from the Court is not that the defendant should appear before it, but that he should choose one of the three nearest Courts for trial.

M	J	K
her maintenance, a *herem* may be announced against all who know aught of his property, and even bailments are to be reported.	husband is not in the city, it is proper to declare a *herem* against all who know aught of his property and even bailments are to be declared. The Court shall set the alimony in accordance with what they find. Certainly the husband must state under the *herem* what he has in his possession.	if he is not in the city a *herem* may be announced against all who know anything of his property and even a bailment is to be revealed. They shall fix her alimony in accordance with that; all the more the husband can be compelled to accept a *herem* (to give a full statement of his property).

The following is the portion of the Munich text that has been omitted above in order not interfere with the clarity of the arrangement o f the various codified Takkanot.

צץ המטה פרח הזדון על כל יהודי ששם חברו בידי גוים ואם עש[ה]... להצילו מכל נזק על פי שבעה טובי העיר הכשרים ואם לא ימצאו בעיר על פי הסמוכה לה.

וגם צץ המטה על אותם השבעה לדרוש ולחקור ולעסוק (ולפסוק?) שיחז.....

אין אדם יכול להשתרר על ידי מלך ומושל כדי לקנוס ולענוש ולכוף לא בדברי הבאי ולא בדברי שמים והמדבר עמו כמוהו אפילו על [ידי] גלגול החרם מוטלת על המסור אבל המדבר עמו מפני אימת המלך אין החרם מוטלת עליו לפי שעה ובלבד שלא יערים ולא ירבה שי[חה] עמו.

ולא תחול החרם על השם חברו בערכאות של גוים כשמסרב מב"ד לפני עדים.

וגם לא תחול על השם מלשין ששם א[ותו בידי] גוים.

חתן שמתה אשתו בלי ולד תוך שנתה בר קיימא יחזיר לה [צ"ל ליורשיה] נדונייתה והתכשיטין ושלא יערים לכלות המעות ולא ירבה ביצ[יאת] הקבורה.

ואין החרם חלה עליו עד שלשים יום אחר שישאלו לו.

ועוד גזר שלא ישאל חיובו ואפילו מתה אחר שנתה ואפילו ילדה, וי"א תוך שנתה דוקא וי"א [שר"ת] חזר בו וטוב לעשות פשרה ביניהם.

TEXT B

SECONDARY RECENSION

Besides the primary recensions of the Takkanot of R. Tam, we have, as has been said, a secondary recension, that is a recension which is evidently a further development and growth of the texts just studied. It is found in RMP 1022 (P. Heb. מ), and in the appendix to the *Likkute Ha-Pardes*, Venice 1519, (L, Heb. ל). It occurs also in Ms. Merzbacher 75, mentioned above (chapter I). This text is called below E (Heb. ח). Another form of P is found in Res. R. Moses Mintz (No. 102; see above, p. 219). Variants from this source are marked מנ. The sections which correspond to those of the primary recensions have been marked with the letters which denote them in that text. It will be seen from a cursory examination, that while one or two sections are omitted the framework of the compilation are the above Takkanot. (See also below p. 204).

L is a later text than P. (See p. 202, note 3). That can be seen from section 12, where the writer of L has attempted an emendation. P reads, "this Takkanah was in vogue before the time of R. Gershom, but R. Gershom ordained that it be renewed yearly." This reading is difficult, for how are we to assume that R. Gershom, finding a usage of paying tithes regularly, would make the obligation dependent on a yearly renewal of the Takkanah. L therefore tries to explain it in this wise: "Before the time of R. Gershom there was a Takkanah to pay half a tithe, but R. Gershom ordained that it be renewed every year (and a full tithe paid)."

TEXT

1. אם יש מנין מצומצם בביהכ"נ והתחיל ש"ץ להתפלל אין אחד מהם רשאי לצאת עד שיגמור ואם יצא אחד מהם בלא רשות והתחיל קדיש או קדושה יגמור בלא מנין וכן נמצא בהלכות גדולות.
2. אין אדם רשאי לבטל התפלה בשבת או ביו"ט אא"כ בטל התפלה קודם לכן ג' פעמים.
3. חרם שלא יתפלל ש"ץ כשמחזיק אדם עד שיאמרו טובי העיר שיתפלל.

4. חרם שלא ירחיק אדם מאשתו[1] וישהה יותר מי"ח חדשים בלי רשותה.

5. תקנת גאוני' יכולים ישראל לשום[2] חרם בכל זמן אך יכולי' להתיר ליחיד לצורך שעה אם יש טענה עבר הזמן א"צ להתיר ובתוך הזמן יכולי' להתיר.

6. מותר לדבר עם עבריין שעבר על החרם ונמנה[3] לעשירי.

7. עיר שיש בה בית הקברות כופין בני הכפרים המוליכים מיתיהם שם לדון שם ואומ' רבני[3a] צרפת מקום שנזכר שהיה שם תלמיד חכם[3b] קרוב לודאי שהיה שם חרם ב"ד ודנין בה.

8. תקנת הקדמונים לא גזרו לבא לב"ד מירושת קרקעות אלא לבית דין הגדול שבמדינות.

9. תקנה שלא ליתן גט לאשה בעל כרחה ואין הגט כלום[4]. נתן לה גט[5] מתחלה ברצונה[6] ונמצא פסול בגט[7] יתן לה גט שני בעל כרחה אם ידענו שלא ידעה הפסול[8] מן הראשון.

10. מקבלי חרם הקהלות אומר רבינו יחיאל דאם פוטרים זה את זה דאין צריך היתר ואם האחד רוצה לקיים את החרם וחבירו חוזר בו[9] הרוצה לקיים מותר[10] על פטור חבירו וחבירו אסור[11] וקצת רבני[12] צרפת חולקים עליו[13].

11. תקנה שלא לשכור בית גוי שדר בו חבירו ישראל עד מלאת לו שנה אחר שיצא היהודי מן הבית אבל אם הדר אומר לגוי שכר לי הבית בפחות ממה ששכרת[14] בשנה שעברה ואין מפרש מפני מה שואלו[15] או אומר לו אין דעתי לשוכרה והשני[16] נותן לגוי שכרו שנתן לו הראשון אז אין שום תקנ' אם

1 ח. ל. את אשתו.
2 ל. לשים חרם בלא זמן.
3 מ. ונרצה לעשות תקנה.
3a ח. נדולי.
3b ח. באותה העיר סתמא.
4 ל. ואם מקדם נשאת בנט זה נלתה דעתה ואינו עבריין. ח. ואם נשאת בנט זה נלת' דעת' שמרצונה ואינו עבריין.
5 ל. זה.
6 ל. מרצונה.
7 ח. נט פסול.
8 ח. ל. בפסול הראשון.
9 ח. ל. ופוטר.
10 ח. ל. מותר לינשא.
11 ח. ל. אסור לינשא.
12 ל. מבני. ח. מרבותי' מצרפ'.
13 ל. על זה אך אם נשא האיש (את) האשה מותרת לינשא לד"ה. ח. על זה אם נשא האיש האשה מותר לינשא בזה.
14 ל. ששכרתי.
15 ל. שואלו בפחות.
16 ל. והשני שומ' [צ'ל שומע] ונותן מה שנתן.

לא יוקרו או יזלו הבתים[17] שבעיר ואין התקנה[18] חלה על ישראל[19] המשכיר בית לישראל אחר.

12. תקנה שלא לסרב[20] ליכנס בחרם להרים מעשר ואחד יכריח לכולם אם יש מנין בעיר אך לא יהיה גבאי אם לא רצו[21] האחרים וקודם[22] ר"ג מ"ה היתה תקנה ור"ג מ"ה תיקן לחדשה בכל שנה.

13. חרם על המכה[23] חבירו שיתירו לו הקהל קודם שיתרצה[24] לעשרה במנין עד שיקבל[25] כל מה שיגזור[26] ב"ד אם המוכה קובל וצועק עליו ואם לאו יתירו[27] הקהל לעצמן.

14. עוד תקן ר"ת ובית דינו למכה חבירו חוץ מבית הכנסת לקונסו כ"ה דינ' טורנייש ובבית הכנסת[28] הקנס כפול ג' דינר טורניישׁ[29] וכן העיר רבינו יוסף קרא[30] שראה בפני[31] רבינו יחיאל מפריש ואם הכהו שתי פעמים יתן[32] שתי קנסות ואם המוכה הכה המכה אבר זכותו ואין צריך להתיר למכה הראשון אך הקנסות ישפטו לפי ההכאות מכתב יד הרי"ח מטרוישׁ[33] כי לא נתפשט מגדולי צרפת בין מכה חוץ לבית הכנסת למכה בבית הכנסת אלא נתנו כח ביד ב"ד למעט ולהרבות[34] לפי העת למכה ולמוכה כאשר יישר בעיניהם וקנס זה למוכה ולא לעניים כדאמרינן (ב"ק לו' ב') על מעשה דפלגא דזוזא שחייבוהו[35] שיהא למוכה וכן תקנו שאשה[36] יחידה או קרוב נאמן לומר שראה שהכהו וכן קטן נאמן כשאין פנאי להזמין אחרים כשירים כדאמרינן פרק החובל (שם צ' ב') ההוא דתקע ליה לחברי' א"ר יודא הא אנא חזיתי' זיל שלים ליה ולפי רוב ההכאות[36a].

17 ל. בתים.
18 ל. תקנה.
19 ל. בישראל.
20 ל. ל'.
21 ל. מצד. ח. ירצו.
22 ח. ל. וקודם ר"נ מ"ה תקנו נאונים חצי מעשר ורבינו נרשם תיקן לחדשה בכל שנה.
23 ח. ל. מכה חבירו.
24 ל. שיתמנה לעשירי במנין. מנ. במנין עשרה. ח. שימנה בעשרה.
25 ל. על שיקבל.
26 ח. ל. שיגזרו ב"ד עליו אם רוצה המוכה דוקא ויצעוק עליו.
27 ל. יתירו לו.
28 ל. ובבית הכנסת כפל.
29 ח. ל. ל'.
30 ל. הר"ר יוסף קרוון. ח. ר' יוסף קראו.
31 ח. פני נ. פסק כן מרבינו יחיאל מפריש.
32 מנ. הקנס ב'פ. ל. שני קנסות. ח. חייב.
33 ל. הר"ר יחיאל מפריש מטרוש. ח. יחיאל מפריש.
34 ל. ולהרבות לו. ח. ולהרצות.
35 ל. שחייבוהו חכמים.
36 מנ. שיהא אשה או קרוב נאמן.
36a ח. רוב הקנס

15. חרם לִמסור יחיד וקרוב כשירים אף עַל גב דלא שמעו כי הלשינו אך רואין כשמדבר למוֹשל וכן צוה המושל על המולשן או אמתלא אחריתא.

16. חרם שלא לקצץ[37] גליון ספר אפי' כדי לכתוב עליו.

17. חרם שלא לבייש בעלי תשובה מעונם בפני'.

18. חרם שלא לראות בכתב חבירו ששולח[38] לחבירו בלא ידיעתו אסור ואם זרקו מותר.

19. חרם שלא ליקח גניבות כגון תועבות או[39] גביע ובגדים צואים וספרי תפלות ומשמשי' מפני[40] הסכנה.

20. תקנת[41] ר"ג מ"ה בין שהוא במדינ' הים בין שאינו במדינ' הים והאשה תובעת מזונות יחרימו כל היודע משלו וכ"ש[42] כשבעל בעיר שיקבל חרם שאין לו כלום ויפסקו[43] לה מזונות על זה.

21. הא דאמרינן (מ' ב"ק ח' ד') עבד ואשה פגיעתן רעה היינו בחבלות אבל אם הבעל[44] נהנה מגזל[45] אשתו חייב וכתב רב נחשון גאון דהא שהם פטורין היינו מלשלם אבל מלקות חייבים דאל"כ עבד הקל ואשה הבזויה יהיו חובלים באנשים חשובים.

22. שנים שחבלו זה את זה[46] משלמין במותר נזק שלם ואחר כך שמין החבלות והבשת והכל זה כנגד זה ויש יותר[47] משנים או[48] מג' מבאחד ואם נתעצם[49] המכה ואמר[50] לא בעינ' דין תורה יסלקו ב"ד[51] את ידם ויתנו רשות למוכה ללכת להביאו בעש"נ.

23. א"ר[52] המכה מי שחירף אביו יעשו דין למוכה שלא מצינו שיש לנו להכות מי שמחרף את אביו[53].

24. תקנת גאונים קדמונים שמע[54] שהלשינו אם[55] יש הוכח' ואמר מולשן

37 מג. לקוץ.
38 א. לו השולח. ח. או השולח.
39 ל. ל'.
40 ל. משום.
41 ל. תקנת ר"ג מ"ה בין בעל הבית בין שאינו בעל הבית. ח. בין בעל בעיר בין אין בעל בעיר.
42 ל. ומ"מ.
43 ל. יפסקו.
44 מ. ל. ל'.
45 ל. בגזל.
46 ח. מ. זה בזה.
47 ל. יש יותר.
48 ל. ושלשה מהאחד. ח. או בג' כשיש.
49 ל. נתאנס.
50 ל. ואומר דונו לי. ח. ואמר לב"ד אין לי דין תורה.
51 ל. ב"ד ידו ממנו.
52 ל. אמר רב.
53 ל. <תקנת גאונים לשים חרם בקהל בסתמא על מי שגזל את חבירו>.
54 מג. מי ששמע.
55 ל. <אם ישיב כזה>.

למושל דברים כדי להסיר עצמו מן המלשינות ובדברים שאמר להציל עצמו ומזיק למלשין ואף הלשינו דבר רע יותר מהדבר שאמר המלשין ראשון פטור השני כיון דצריך לאהדורי כדי להציל עצמו] ואין זה להציל בממון חבירו והראשון נקרא מלשין בכל דין וקנס.

25. תקנת חרם קדמונים שיעשו[57] לאחת מן הערים הזמנה לתובע שירד עמו לדין באחת מן ג' הערים הסמוכות שיש[58] שם בית דין ולא יוציא מנה אחר מנה לילך ולבקש חשובי' שבמדינה ואם יש[59] אדם חשוב בקרוב[60] יזמינו על פיו.

26. גם בתקנות אילו יש שאם מצאו והזמינו[61] בפני ג' עדים [צ"ל ערים] לא יסרב מלבאר לו ללכת באחת מן ג' הערים לו לדין[62] גם הקבלה כך היא מתקנת ר"ג ללכת לב"ד הגדול. ושליח ב"ד נאמן כבי תרי לומר שרצה להראות לו ההזמנה ושאמר לו בשליחות ב"ד שיבא לב"ד באחת[63] או בשני ימים כי כן התקנה ואם יסרב ידונוהו[65] הקהל ע"י השליח ויש כח לתובע לבטל התמיד באותו עיר לכתוב לו הזמנה בעיר שיבאר הנתבע באחת מן ג' ערים ויכול לבטל התפלה כשילכו לשם עד אשר ישבו[66] ג' מהם לב"ד ואם לא בא אליהם[67] יכתבו שלא בא.

רגילים[68] לברך הקהל אחר נטילת[69] חרם כדאמר הקב"ה למשה כיון שקבלו ישראל את התורה צריך לברכם שנאמר ולמוכיחים ינעם ועליהם תבוא ברכת[70] טוב ולכן נכתבה וזאת הברכה אחרי ואתם נצבים. סיום[71] תקנת ר"ג מ"ה[72].

TRANSLATION

1. If there is precisely a quorum, in a synagogue, and the *Hazzan* has begun to pray, none of those present may

57 ל. שיעשו אחת מן הערים הסמוכות לתובע וירד עמו הנתבע לדין באחת.
58 ל. שם בית דין ל'.
59 ל. ל'.
60 ל. הקרוב.
61 ל. והזמינו לדין.
62 ל. ל'.
63 ל. האח' או בזמן ימים שאמר לו השליח והנתבע יבחר אחד מהערים.
65 מג. ידונו. ל. ינדוהו.
66 ל. שם שלשה.
67 ל. עליהם לכתוב.
68 ל. רגילות.
69 ל. הטלת.
70 ל. מג. ברכה טובה.
71 מג. סיימתי.
72 ל. ושלא להוציא מבית הכנסת טלית או מחזור בלי רשות הבעלים ותקן כי במקום שיש גדול העיר דנין בה.

leave until the *Hazzan* has completed his prayers. But if one left after the *Hazzan* began the recital of *Kaddish* or *Kedushah*, it may be completed without a quorum. So the law is found in *Halakot Gedolot*. [1]

2. A person is not permitted to interrupt the prayers of the Sabbath or Festival day unless he has thrice interrupted the prayers of the daily services without success.

3. There is a *herem* that the *Hazzan* may not recite the prayers when a person protests until the "elders of the community" tell him to proceed.

4. A *herem*: that a man should not leave his wife and stay away for more than eighteen months without her permission. [2]

5. A takkanah of the Geonim: the people of Israel may establish a *herem* with any time-limit, but they may suspend it for an individual because of a temporary need. When the time-limit has passed there is no need of releasing the *herem*,[3] but within the time-limit they are empowered to release it.

[1] See above, p. 137, note 6. In PD there is an interesting statement added to this section: "This law is similar to that of the priest who is sacrificing at the altar when it is discovered that being the child of a forbidden marriage he is unfit to perform the priestly functions. In that case too, he need not be removed from the altar but he may complete his sacrifices, since he has begun them."

The statement is evidently based on *Mishna Terumot* 8.1, quoted *Kiddushin* 66b, which provides that the sacrifices offered by a priest, who *afterwards* is discovered to have been the child of a forbidden marriage, are not invalid. Nothing is there said, however, in regard to permitting a priest who is found unfit, to complete the service. Truly, Maimonides and *Tosafot* (*Ta'anit* 17b) go as far as to say that even the sacrifices offered by him after the discovery are valid, but there is no source for permitting him to continue to act in the priestly capacity even for a moment after the discovery of his unfitness.

[2] See Takkanah of R. Tam concerning Abandonment, above p. 167.

[3] The view that the *herem* is a means of legislation is a later development. Originally it was conceived as a vow on the part of the individual of the community or a decree of the foremost scholar of the generation(See Rashi, RFL 21). It is here described rather as a constitutional means of legislation, its original meaning having been all but obscured. The doctrine that a *herem* with a time-limit expires automatically when that time-limit is reached is not generally agreed

6. One[1] may converse with a transgressor who has disobeyed the *herem* and he may be counted as one toward a religious quorum.

a. 7. A city[2] which has a cemetery may compel the villages which bring their dead to that cemetery to come under the jurisdiction of its court. And the French Rabbis say that if it is known that there once lived a scholar in a certain place, it may be taken for granted that an established court existed there and one must stand for trial there.

8. A Takkanah of the Ancients: a defendant in a litigation regarding the inheritance of landed estates may insist on bringing the matter before the highest Jewish court of the province.

b. 9. A Takkanah: not to divorce a woman against her will. Such a Writ of Divorce is void. If he gave her the writ originally with her consent, and then it was found to be unfit, he may give her a second writ against her will, provided we know that she did not realize that the first writ was void.

10. R. Yehiel[3] says that those who pledge themselves

to. Those who consider the *herem* a vow or a decree of a scholar, held that it continued in force until abrogated even though its time limit had passed. This seems to have been Rashi's view (Commentary to *Sanhedrin* 596). The Tosafists, however, take issue with this point of view. They insist that Rashi's words are to be interpreted as applying only to such Takkanot as have no time-limit (Comp. *Yam Shel Shelomo, Bezah* 1.9, *Yebamot* 6.41). This latter view is also held by R. Eliezer b. Nathan (*Raben*, Prague, 76a).

[1] R. Isaac b. Sheshet in a responsum (No. 172) quotes the rule laid down in this section from R. Meir b. Baruch.

[2] This law of jurisdiction was invoked by R. Hayyim Paltiel (RMP 249), but he does not quote the Takkanah, See also Isserlein, *Pesakim* No. 65, end.

[3] For the ordinances governing the suspension of betrothals see section 2, p. 139, above. The R. Yehiel referred to is probably R. Yehiel of Paris, who lived in the thirteenth century. In Pd, this section is somewhat amplified. We read there, "As for a betrothal without the undertaking of a *herem*, there is an ancient *herem* to maintain the betrothal, and that he who refuses should pay." That section is quoted from Pd (or a text similar to it) in the responsa wrongly ascribed to R. Isaac b. Sheshet, Munkacs 1900, f. 42a.

under a *herem* of the communities need no suspension of the *herem* if they release each other. But if one party wants to maintain the *herem* and the other refuses, the party who wishes to maintain it is free because of the release by the other, but the other party remains bound Some of the French Rabbis dispute this.

b. 11. A Takkanah: not to rent the house of a Gentile in which a fellow-Jew lived until a full year has passed after the other Jew left the house. But if the Jew said to the Gentile, "Let the house to me at a lower rate than I have been paying, and he gave no reason for asking a reduction in the rent, and the second offers the Gentile the amount the former tenant had been paying regularly, in that case there is no ordinance, unless the houses of the city have fallen or risen in value. And the Takkanah does not affect a Jew who lets a house to a fellow-Jew.

d. 12. A Takkanah: not to refuse to enter the *herem* to raise the tithe. One member of the community may compel everyone to enter the *herem* if there is *Minyan* in the city. But one cannot become a *Gabbai* (an administrator of the funds) if the others do not permit it. This Takkanah was in vogue before R. Gershom but R. Gershom ordained that it be renewed yearly.

g. 13. A *herem* concerning one who strikes his neighbor: The community must not release him so that he may be counted for a *Minyan*, until he has agreed to perform whatever the Court may enjoin upon him. This is provided the assailed person makes a claim, otherwise the Community may suspend the *herem* of their own accord.

14. Furthermore did R. Tam ordain that if one struck his neighbor outside the synagogue he is to pay twenty-five dinars, and in the synagogue the fine is double that amount. So did R. Joseph Kara[1] testify that he saw R. Yehiel of Paris decide. If one struck one's neighbor twice he must pay a double fine, but if the person assailed hit back at the

[1] L. Reads R. Joseph Karwan. The person has not been identified, but he may have been related to the R. Joseph Kara, who was a contemporary of Rashi. See *Einstein, R. Joseph Kara u. Sein Commentar zu Kohelet*, p. 22.

assailant, he lost his rights. There is then no need of releasing the first assailant from the *herem*, but the fines are to be decided upon according to the number and character of the blows. All this is taken from a manuscript of R. Yehiel of Troyes,[1] for the distinction between the one who strikes another in the synagogue or outside has not been accepted by the rabbis of France, but they permit the Court to increase or decrease the amount according to the circumstances (and the position) of the assailant and the assailed. This fine is to be given to the assailed[2] and not to the poor, as it is said in regard to the case of the half *Zuz*, which was ordered to be given to the poor.[3] So also was it ordained to be given that even one woman or a relative is to be trusted when they testify that they saw one strike another. So too, is a minor believed in a case when it is not possible to summon other fit witnesses. As we read in the Talmud chapter *Hahobel*,[4] "There was a

[1] The word מטרוש may be a corruption of שירוש or שיר ויוש which occurs quite often as the tittle of R. Yehiel of Paris (Compare *Or Zarua* I. 232a, and see Wellesz in J. J. L. G., 1906, p. 106). The reading of L ר' יחיאל מפריש מטרוש would seem to substantiate this theory. There is no "R. Yehiel of Troyes" known.

[2] In Rabbinic law, all fines are given to the person damaged. Thus the thirty shekels to be paid by the master of the ox who gored a slave, are given to the master of the slave (Exodus 21. cf. Deut. 22.19, 29). It was only in the Middle Ages, that the custom of the environment of taking all fines for the State, influenced the Jews to take fines for the poor. In this case however, Talmudic precedent was followed and the fines were paid to the person injured.

[3] *Baba Kamma* 36b. In that case an assailant was ordered to pay half a *Zuz* for his assault. The person injured said, "Since it is only half a *Zuz*, let it go to the poor." After a while he changed his mind and wanted to use it for himself. R. Joseph, who was the judge in the case, and also the administrator of the funds for the poor, refused to return it, saying that now it belonged to the poor. The story shows, as the writer wants to prove, that ordinarily the fines were paid to the assailed person.

[4] Chapter 8 of *Baba Kamma*.

The story referred to is evidently that told in *Baba Kamma* 90b. But the writer is quoting from memory and we cannot assume that the differences between his account and that before us are due to any textual errors. The principle that the writer wants to prove, that the judge may act as witness in such a case although ordinarily the same person cannot act both as judge and witness, is borne out by the story as it

person who struck his neighbor, and R. Judah said, "Here am I who saw it, "Go and pay". And the payment must be according to the number of blows.

15. A *herem*: even a single witness or a relative may be accepted against an informer, and even though they did not hear him defaming but saw him speak to the ruler and then the ruler gave orders against the defamed person, or some other such circumstantial evidence.

h. 16. A *herem*: not to cut off the margin of a book even in order to write thereon.

k. 17. A *herem*: not to put repentant converts to shame because of their sins.

n. 18. A *herem*: not to read the letter which one's fellow sends to another without his knowledge, but if it is thrown away one may read it.

m. 19. A *herem*: not to buy stolen things, such as images or a chalice or priestly vestments, and prayer books, or the vessels of worship because of the danger.

j. 20. A Takkanah of R. Gershom, the Light of the Dispersion: whether the husband is in a foreign country or not, if his wife demands her maintenance, they shall announce a *herem* against all those who know anything of his property, (and all the more if the husband is in town he must state the extent of his property under a *herem*) and on the basis of that amount they shall decide the amount due her.

21. The law that one[1] cannot collect from women and slaves[2] refers only to cases of assault, but if the husband benefited by his wife's dishonesty he must make restitution. R. Nahshon Gaon[4] wrote that (even in the case of assault) they, the slaves and the women, are free only

appears before us in the Talmud. But a comparison will show at a glance that we have here not even an epitome of the story.

[1] Lit. "Clashing with a woman or a slave is always evil", for if one injures them he must pay, while if they injure another he has no redress. Mishna *Baba Kamma* 8.6.

[2] See additional note page 377.

[3] Perhaps R. Nahshon, Gaon of Sura toward the end of the ninth century. The responsum is quoted in *Pardes* (ed. Const. 24d and ed. Warsaw 60a).

from payment of damages, but they are to be punished with stripes, otherwise an unworthy slave, and a base woman might strike (with impunity) worthy men.[1]

22. If two people assail each other, the one doing the greater harm is to pay to the other.[2] The wounds and the shame are also to be taken in consideration. Naturally there are heavier damages for two or three blows than for a single blow.[3] If the assailant is stubborn and says "I do not want to be (*variant*: I insist on being) judged according to the law of the Torah,"[4] the Court may withdraw from the litigation and give permission to the assailed one to go to the Gentile Courts.

23. My master[5] says, if a man hits a person who insulted his father, justice must be done for the person hurt, for we find no law permitting one to strike one who insulted one's father.

24. A Takkanah of the Early Geonim: if a person has proof that he has been defamed, and makes representations to the ruler whereby he saves himself from the defamation,

[1] *Mordecai, Baba Kamma* 8.91

[2] A quotation from *Baba Kamma* 33a.

[3] This passage which in the Hebrew is not clear, was completely misunderstood by the writer of L; the writer of Pd simply omitted it. The interpretation given here is offered with some diffidence.

[4] According to the strict Talmudic law, of course, he could not be adjudged guilty. Firstly only properly ordained Rabbis can be judges in cases of Assault (*Sanhedrin* 1.1). And ordination of that kind being impossible outside of Palestine, jurisdiction over such cases ceased when Palestine was no longer the Jewish center. Secondly, the ordinances admit testimony inadmissible in accordance with the views of the Talmud. Thirdly, the fines set are arbitrary. The Court could not therefore insist in the defendant obeying it completely but on the other hand, it could refuse to protect him against defamation before the Gentile authorities unless he obeyed its injunctions. P reads here, "And if he says, 'I do not want the judgment of the Torah'". The meaning is the same in either case, but it seems to me that L is here to be preferred.

[5] This sounds like a decision in an actual case. It is possible that the word "Master" refers to Rashi who is often referred to in that way in French works.

but by those representations[1] he hurt the original informer and even accussed him in a worse manner, than he had been accused—the second informer is free from guilt. For since he had to try to save himself, this is not considered 'saving himself by the property of others' and the first is a *Malshin* in regard to every law and fine.

i. 25. A Takkanah under the *herem* by the Ancients: that a summons should be issued by one of the cities to a complainant that the defendant should come to trial with him before one of the three nearest cities where there is a court. So that he should not incur expenses in going and seeking the prominent men of the province. If there is a prominent rabbi in the vicinity the summons shall be issued by him.

26. It is also one of these Takkanot that if a man is summoned to appear before three cities, he must not hesitate to choose one of the three cities.[2] It is also a tradition as an ordinance of R. Gershom to choose the greatest court.[3] The word of the Agent of the Court is accepted when he says that he wanted to show the defendant the summons, and that he told him to come before the Court within one or two days.[4] If he refuses to come, the Community shall judge him on the basis of the testimony of the Agent. The complainant has the right to stop the prayers in that city to compel them to issue a summons, so that the defendant should choose one of three cities. And after the summons has been issued he may interrupt the prayers until three men sit as a Court. And if the

[1] The text of P is here clearly defective and is not to be saved by so easy an emendation as that proposed by Bloch in his edition of RMP.

[2] Bloch emends "three" to "two" because he reads עדים instead of ערים making *witnesses* out of the *cities*. The context shows that cities are meant here and not witnesses and the parallel passages in Pd leaves no doubt as to the matter.

[3] This passage is omitted in B.

[4] The ordinary term was three days, Cf. Res. Rashi in RFL f. 15b, cf. also Takkanot Shum 2, below p. 230, and *Or Zarua*, *Baba Kamma* 436, Res. of R. Samson of Sens.

defendant refuse to come before them, they must issue a writ that he did not come.

27. It is customary to pronounce a blessing over the community in connection with the announcement of a *herem*, as we find that the threatened punishments of Deuteronomy are followed by the blessing of Moses.

End of the Takkanot of R. Gershom.

TEXT C.

Besides the two recensions of the Takkanot of R. Tam that have been discussed, there is also in existence one in which the Takkanot of R. Tam are interwoven, as it were, with those of R. Gershom. In this recension the writer aims apparently to combine all the extant ordinances and to arrange them in codified form. The original of this work has not come to my notice, but in several manuscripts it has been preserved with a number of additions by later writers. These additions to some extent obscure the work of the compiler so that it is no longer easy to say which text he used in making his compilation.

In establishing the text of this recension, the following manuscripts have been used: Ms. British Museum, Cat. Margoliouth 1081, (Add, 27129), referred to below as A, Hebrew א; Merzbacher, Cat. Rabinowitz, 135, referred to as B, Hebrew ב; and British Museum, Cat. Margoliouth, 569, (Or. 1083), referred to as C, Hebrew ג.

B and C are practically identical, and they have been used only to correct the obvious errors that occur in each. A is longer than the others and contains material that is omitted in them. For instance we learn from it, that the rule declaring that any city in which a rabbi is known to have lived at some preceding time may be assumed to have had a *herem beth din*, was established in 1272 (section 3). The writer of A, too, marks the end of section 42, with the statement "these are the ordinances of R. Tam which the Israelites of the exiles of Edom (Christendom) have accepted upon themselves and for their children forever. Those who transgress them may be compelled by the

Court to make restitution." There is a similar remark in BC but coming at the end of section 41, which is a well-known ordinance of R. Tam, it seems in that text to refer only what immediately precedes it.

Both A and BC contain a number of interpolated remarks commenting on the ordinances from the point of view of Talmudic law. The strange lines at the end of BC, which contain only the opening words of the Ordinance of R. Tam against informers (Chapter IV, Text A) followed by the words "These are the ordinances of R. Gershom, the Light of the Dispersion." are clarified by an examination of A, in which is the compilation of the ordinances followed by the complete text of the Takkanah of R. Tam against the informers (see above, p. 159). It is evident that the writer of BC who in several instances shows a desire to abbreviate the material before him, added only the opening words of the herem of R. Tam, but did not think it necessary to quote the whole of it.

In view of the fact that the larger part of this recension is merely a re-arrangement of the older texts that have already been discussed, it does not seem necessary to translate it. The remarks necessary for its further elucidation have been included in the corresponding sections of L-P.

Wherever A differs materially from BC the two versions are given in parallel columns; where the differences are slight, the text given is that of A, while the variants of B and C are placed in the notes. Version A has however in some instances "been corrected" by a later hand; the original reading has in such cases been placed in parentheses, and the new reading, which is usually found above the line or on the margin, has been printed in brackets. In one case which is noted, version A has suffered a serious omission, and the text has been completed from BC.

א	בג
הילך חרמות קדמוניות מרבינו גרשון מאור הגולה נ"ע	תקנות רבינו גרשון מאור הגולה

1. שלאו למסור חבירו או שלא להלשינו לא בסתר ולא בגלוי.

ג. ב .ג ושלא

2. מקום שישו חרם ב"ד אם עבר דרך אדם שם והזמינו2 אחר לדין ע"פ החרם בפני עדים אף בשוק חל החרם מיד ויטעון בב"ד3 ואף שלא בעדים חל החרם דלא איברו סהדי אלא לשקרי אלא שאין יכולים לכתוב סרבנות בלא עדים ואחרי טענותם אם רצה הנתבע לילך לדרכו ילך ואינו צריך להמתין עד4 גמר פסק דינו ועל התובע לחזור5 אחריו לשלוח לו פסק דינו.

א	בג
3. ואמ' נדולי צרפת שברדרוייש שנ' ה' אלפים ול"ב מקום שנזכר שהיה שם מקדם ת"ח באותה עיר ומסתמ' קרו' לודאי שהיה שם חרם ב"ד והטילה (?) ודנין אות' כו.	
4. ומתקנות עיר שיש בה בית הקברות כופין הערים המוליכים מיתיהם6 שם לדון שם.	
5. וקבלת קדמונים שמענו חרם קדמונים לא נזרו לבא לב"ד מירושת קרקעות אלא לב"ד הגדול שבמדינות.	
6. שלא ליתן נט7 לאשתו בעל כרחה ותקנו שאין הנט כלום ואם ניסת בנט זה נילת' דעת' שמרצונה ואינו עבריין. שוב8 נתן לה בתחלה ברצונה ונמצא בנט שום פסול יתן לה נט שני בע"כ9 דאיש שלא ידעה האשה בפסול ראשון.	
7. שלא לישא ב' נשים ואי' להתיר החרם רק בק' אנשים מג' ארצות כגון פוייטיר10 ונורמנדיאה וצרפת וגם הם לא יסכימו עד אשר11 יראו טעם נכון בדבר ושתהא כתובתה צרורה ומונחת ביד נאמן במשכונות או במעות.	

א	בג
8. חרם קדמונים מרבי' גרש' כאשר מקבלים אות' איש ואשה לינשא צריך מאה להתיר ואם הם ממדינה אחת די.	ואם האיש או האשה פוטרי' חרם ר"ג אין צריך התרה. והחרם שמקבלי' האיש והאשה לאחר חשומת יד צריך מאה איש כמו כן להתיר אבל אין צריך מג' ארצות.

1 ב. ג. שיש שם ב"ד.
2 ב. ג. ובא אחר והזמינו לדין.
3 ב. ג. ואפי' המזמין מעיר אחרת.
4 ב. ג. עד גמר ח'.
5 ב. ג. לשלוח אחריו פסק דינו.
6 ב. ג. המוליכים שם מתים.
7 ב. ג. לגרש אשתו.
8 ב. ג. ואם נתן לה גט ברצונה ושוב נמצא.
9 ב. ג. בע"כ אם ראינו שלא ידעה האשה בפסול ראשון.
10 ב. ג. אניו.
11 ב. ג. אם לא.

9. ותשומת יד בלא קבלת חרם יש חרם קדמונים לקבול לקיים התשומת ולפרעו החוזר בו אך יש להתירה אם רואים טעם כגון שאין לו מה לשלם וכולן אין רשאים להתיר אם לא מטעם מבורר. ומנהג להתיר לוקחים פולי' בחשבון האנשים שרוצים לברר ונותנין לכל אחד ואחד ואז יבאן למנין לפי שאין מונין ישראל.

ותשומת יד בלא קבלת חרם יש חרם קדמוני' לקיים התשומת יד ולפורעו החוזר בו אך יש להתיר וכולם אי' רשאי' להתיר עד שיראו טעם נכון בדבר.

10. ואומ' רבינו יחיאל אם פוטרים זה[1] לזה מן החרם אין צריך התר ואם האחד רוצה לקיים החרם ואינו פוטר[2] וחבירו חוזר בו ופוטרו הרוצה לקיים מותר לינשא על פטור חברו וחברו אסור לינשא וקצת רבני צרפת חלוקים בזה אכן אם נשא האיש האשה מותרת לדברי הכל.

11. והמחזיק[3] בבית הכנסת ומזמין חברו לדין וחברו[4] מסרב יש לו רשות לבטל [סדר] קדושה וערבית[5] אך לא תפלת יוצר ומנחה ער[6] כי יבטל התפלה ג"פ רצופים.

א

בג

ואז יבטל כל התפלות נתן רשות בינתיים וחזר ובטל צריך עוד לבטל ג"פ רצופי'

יש ב' בתי כנסיות בעיר אינו יכול לבטל תפלה רק במקום שהנתבע מתפלל שם

א

ואין יכולין הקהל ללכת במקום אחר בצנעא להתפלל בלא ידיעת המחזיק הלך לו המחזיק יתפללו אותם שבבית הכנסת בטל ג"פ בבית הכנסת שהנתבע שם אח"כ יכול לבטל בכל בתי כנסיות שבעיר.

בג

אך כשיבטל התובע ג' תפלות באותו ב"ה שהנתבע בתוכו אז יכולי' לבטל כל התפלו' שבבתי כנסיות שבעיר ואין יכולין הקהל לילך למקום אחר להתפלל בצנע' בלא ידיע' המחזיק הלך לו המחזיק יתפללו אותם שבב"ה.

1 ב. ג. זה את זה החרם.
2 ב. ג. פוטר חברו הרוצה לקיים.
3 ב. ג. וכשאדם מחזיק ב"ה.
4 ב. ג. וחברו מסרב ח'.
5 ב. ג. או תפלת ערבית.
6 ב. ג. עד יבטל ג' תפלות ג"פ.

12. שלא[1] לבטל תפלה בין בשבת בין בי"ט בשביל שום תביעה שיש לאדם על חברו אם לא בטל תפלה כבר ג"פ אבל בשביל[2] תקנת הקהל אפי' לכתחלה[3] יכול לבטל בשבת וי"ט. אמ' פלו' הלשינני והדבר נחוץ פן יפול בידי גוים יבטל התמיד אף ליוצר ומנחה ושבת וי"ט אף בפעם ראשונה ויחזיק בבית הכנסת[4] להסירו מידי גוים ואין לו כח למלשין [ולומר] אעשה לו ב"ד מיד[5] אלא יטילו עליו מיד[5] חרם שיודה בפני טובי העיר [מה][6] שאמ' [למושל או לחצרני' ויסלקנו ולא לומ' אלך לב"ד][6] ואם נאמן להם לסלקו מידי גוים אינו צריך [ואם נר' להם שיש][6] לסלקו [מידי גוים יסלקהו][6].

13. משאיל ב"ה לרבי' ויש לו ריב ומצה עם אחד מן הקהל אינו רשאי לאסרו עליו שלא יבא להתפלל בו אם לא יאסור רשותו[7] לכל הבאים להתפלל בה וכן הדין למשאיל ס"ת לקרו' לרבים.

14. ויש חרם שלא יתפלל ש"צ כשמחזיק אדם עד שיאמרו לו טובי העיר שיתפלל.

15. מי שאבדה לו אבדה יש[8] לו כח להכריח הקהל ולהושיב החזן עד שיכנסו כלם בחרם שכל מי שיודע שום דבר ממנה אפי' אינה בידו שיאמר אף אין לו סימן ואף אבדה כבר[9] עברו שנים רבות שנתייאש ואין יכול נתבע לומ' לא אכנס בחרם אך[10] אני מזומן לבא לב"ד ובתקנו' גדולים זה.

16. ואם עושי' בני העיר תקנו'[11] והרוב מתרצים בדבר והם מן ההגונים אין האחרים רשאי' לבטל התקנה ואין לדחות שלא יכנסו בתקנת חבריהם כ"א ע"פ ב"ד כי אין לב"ד[12] ליישב בדבר כי הכל לפי ראות עיניהם כמנהג הקדמונים או כפי צורך השעה גם זה מהתקנות בלא חרם ויכולים הרוב לכוף הסרבני' וכן עשה[13] מורי מעשה.

1 ב. ג. מצאתי שיש חרם שלא.
2 ב. ג. אך עבור.
3 ב. ג. אפי' לכתחלה ח'.
4 ב. ג. ויחזיק בבית הכנסת ח'.
5 ב. ג. מיד ח'.
6 א. המוסגר ח', והוספתי מכ"י ב ות.
7 ב. ג. לכל הקהל.
8 ב. ג. יכול.
9 ב. ג. אבדה כמה שנים שנתייאש.
10 ב. ג. אך אעשה לו ב"ד.
11 ב. ג. תקנת ענוי' או תקנה אחרת.
12 ב. ג. אין ב"ד יושב על זה.
13 ב. ג. ראה.

א	בג
17. ואם יש בבית הכנסת מני[1] מצומצם והתחיל איש להתפלל היוצא מבית הכנסת לצרכיו אם אין לו צורך גדול או עבור ממשלה הוא בכלל ועוזבי ה' יכלו ועבר החרם של רבינו גרשון ושליח צבור יסיים תפלתו.	ואם אין מנין בב"ה כי אם מצומצם והתחיל החזן להתפלל אין אחד יכול לצאת ולבטל המנין עד שיגמור תפלתו ואם עבר ויצא הרי הוא בכלל ועוזבי ה' יכלו ועבר על תקנת ר"ג אך החזן יגמור תפלת' ואומ' הר"ר נסי' שאפי' התחיל קדיש או קדושה יגמור מאחר שהתחיל וכן גבי כהן העוב' ע"ג המזבח ונודע שהוא בן גרוש' או בן חלוצה אי' מורידין אותו אפי' שגמר באיסור.
18. שלא לשכור מגוי בית שדר בו חברו עד מלאת שנה אחר יציאת היהודי מן הבית, אמ' הדר לגוי שכרה לי בפחות ממה ששכרת בשנה שעברה אין אומ' לו מפני מה שואל בפחות או אמ' לו אין דעתי לשוכרה ושני נתן לגוי כשומ' שנתן ראשון או יותר אין שם תקנ' החרם אם לא יזלו או יוקרו בתים שבעיר וישראל המשכיר בית לישראל חברו יכול המשכיר לשכרה לשנה הבאה כרצונו.	וגם יש חרם קדמוני' שלא לשכור בית שדר בו ישראל בין בשאלה בין בשכירות עד מלאת לו שנה תמימה אחר שיצא היהודי מן הבית אם לא ברשות הישראל שדר בו ואם אמ' הדר בו שכריהו לי בפחות ממה ששכרתיו משנה שעבר' או לא אשכרנו והשני אומ' לגוי אני אתן לך שומ' שנתן לך הישראל שנה שעברה או יותר אי' שום תקנת חרם אם אומ' אמתלא לפי ראות טובי העיר וישראל המשכיר בית לישראל אחר יכול המשכיר לשוכר' לישראל אחר לשנה אחרת כרצונו. ובמקום שיש חרם שמעתי בשם גדולי צרפת שר"ל כל מקום שדר שם ת"ח מקדם אף כי אי' דר עתה מסתמ' קרו' לודאי שהיה חרם ב"ד וחלה על הנתבע כדפי'.
19. שלא לסרב ליכנס בחרם חדש להביא המעשר אל בית האוצר כשיתמנו הקהל על הדבר ואחד יכריח את כולם וכל זה אם יש מנין בעיר אז בע"ה אחד יכול להכריח בני העיר אך לא יהיה גבאי אם לא ירצו האחרים וחרם מקודם רבינו	והעובר על תקנו' חרמות על ב"ד להכריח לתקן העבריין לתקן הדבר והאחד יכריח כולם וכל זה אם יש מנין בעיר ומקבל צדקה לא יכריח את שאינו מקבל אפי' יש מניין בעיר ליכנס בחרם זה ומי שאי' לו לשים בעולים שבעיר יכול להכריח

גרשם מחצי מעשר זה מימי הגאוני׳ קדמוני׳ ורבי׳ גרשו׳ תיקן שיחדשוה בכל שנה.	האחרי׳ אך לא יהיה גבאי ע״כ ור״ג תקן שיחדשו בכל שנה.

20 שלא יוציא איש[1] טלית או תפלה או ספר מביתו[2] הכנסת בשביל שום תביעה[3] שיש לו עליו שלא ברשות בעלים.

א	בג
21. חרם קדמוני׳ על המכה חברו שיתירו לו הקהל הרם עבריינו׳ קודם שיתמנה למניין או לכל דבר שבקדושה ע״מ שיקבל עליו לקיים כל מה שינזרו ב״ד עליו אם רוצה המוכה ואם לאו יתירו הקהל לעצמם.	חרם קדמוני׳ כל (חרם) ומכה חבירו] שיתירו לו הקהל חרם עבריינות קודם שיתמנה למניין לכל דבר שבקדושה ועל מנת שיקבל מה שיאמ׳ ב״ד או טובי העיר.
א	בג
22.	ומיהו ר״ת תקן לב״ד לקנוס המכה כ״ה דינרי׳ ונ׳ דינרי׳ אם הכהו בב״ה.
א	בג
23. ותקינו שאשה יחידה וקרוב יחיד נאמן על זה וכדאי׳ פרק החובל (ב״ק צ׳ ב׳) ההוא דתקע לחברי׳ א״ל ר׳ [רב] יהודה הא אנא חזיתיך זיל שלים ליה מנה ונ״ל מדיחיד נאמן הן קרו׳ הן אשה נמי לכן קל יותר להם לתקן.	וקרוב או אשה נאמ׳ לומ׳ שראה שהכהו וכן בכל קטטה נאמן פסול שאין פנאי להזמין כשרי׳ ובצרפת שלא פשטו אלו הקנסו׳ הרשו׳ בידם לקנוס קנס גדול או קטן לפי רוב ההכאות.

24. ונר׳ הכהו ב״פ חייב ב׳ קנסות דא׳ שנים שחבלו זה בזה משלמין במותר נזק שלם א״כ שמין החבלו׳ והבושת והכל זה כנגד זה ויש יותר בשנים ונ׳ מבאחד ועו׳ דא׳ הפיל שנו וסמא עינו יוצא לחירות ומשלם דמי עינו וכתי׳ והפלא ה׳ את מכותך יפריש ויפליג או׳ מו׳ שח״ו

1 ב. נ. שום טלית מחזור או ספר.
2 ב. נ. מבית הכנסת ח׳.
3 ב. נ. טענה.

אין לחייבו כל זה אך בצרפת שלא פשטו הקנסו' אילו ויש בו ב"ד על זה לקנסו הרשות בידם לקנוס קנס גדול או קטן לפי רוב ההכאות.

25. ואם נתעצם המכה ואמ' לב"ד דונו לי דין תורה יסלקו ב"ד עצמן ויתנו רשות למכה להביא מכהו בערכאו' ש"ג חזר המכה והכה את מכהו אבד מכה ראשון את זכותו שאין צריך להתיר החרם למכה [ראשון] (ויטעון המוכה בב"ד) עליו.

א	בג
	אך הקנסו' ישפטו לפי רוב ההכאות ושמעתי שאי' צריך להתיר המכה אם לא יצעוק המוכה עליו בב"ה.
26. וכן למסור כשר יחיד וקרוב אף (באמרם דעתן) [באמדן דעתו] נאמני' על מסור שאין שומעי' שהלשינו אך רואים כשמדבר עם המושל אך צוה המושל על המולשן או שום אמתלא אחרת.	ולמסור קרוב או אשה נאמני' זה על זה ואף באומד הדעת נאמני' על המסור שאין שומעי' כשהלשין אך ראוהו מדבר למושל ואז צוה על המלשן או אמתלא אחרת.

27. שלא לקצץ גליון ספר ואף לכתוב בו.

א	בג
וצ"ע בספרי' שלו מי ימחה ואף דחבריה תיפוק לו משום גנבה ולא שמיע למו'.	

28. שלא לבייש בעל תשובה מעמינו[1] לפניו.

29. שלא ליקח גנבה גבי"ע ותועב' ובגדים צואים וספר תפלות ע"ז ומשמשיה משו' סכנ'.

30. שלא לראות בכת' חברו[2] או השולח לחברו בלי ידיעתו תחלה ואם[3] זרקו מותר.

31. תקן ר"ג בין בעל בעיר בין לא ואשתו[4] אין לה מזונות יטילו חרם על כל היודעים משלו כלום ואף פקדונו' שלו[5] וכ"ש אם בעל בעיר שיקבל עליו חרם שאין לו כלום ויפסקו לה ב"ד מזונות על זה.

1 ב. נ. לפניו מעוונו.
2 ב. נ. ששולח אדם לחברו בלי ידיעת' ורצונו.
3 ב. נ. ואם זרקו מותר ח'.
4 ב. נ. ואשתו שואלת מזונות ממנו.
5 ב, נ. ינלו.

32. תקנו' הגאוני' שמע שהלשינו (או[1] הוכחה) ואמ' הנלשן למושל דברים[2] כדי להציל[3] עצמו מן המלשינו' ובדברי'[4] שאמ' הלשין הנלשן המלשין ראשון ואף הלשינו בדבר רע יותר מן הדבר שאמ' ראשון פטור השני שצריך לו לומ' כדי להציל עצמו מן המושל ואין כאן דין מציל עצמן בממון חברו והראשון נקרא מלשין לכל[6] דין וקנס ותקנ' חרם קדמונים שיעשו אחת מן הערים הסמוכות הזמנה לתובע שירד[7] הנתבע עמו לדין באחת מן[8] הערים ג' הסמוכו' שיש שם ב"ד פן יוציא מנה על מנה לילך ולבקש הזמנה מחשוב[9] שבמרחק קצת ראיה מספ"ק דב"ק ומ"מ[10] לא פסקה תקנ' זו אך אם יש חשוב בקרוב יזמינו על פיו.

א	בג
	והחשוב לא נמנע מלכתו' לו הזמנה.

33. גם בתקנו' אלו יש אם מצאו והזמינו בפני עדים ויזכיר לו ג' ערים לא יסרב מלברור לו וללכת באחת מן ג' הערים לדין.

א	בג
וגם הקבלה כך תקנה ר"ג ללכת לב"ד הגדול.	

34. ושליח ב"ד ישראל נאמן כשנים[11] לומר שרצה להראות לו ההזמנה ושא' לו בשליחות ב"ד שיבא לב"ד באחד[12] משני ימים שאמר לו השליח והנתבע יברור אחד מן השני ימים שאמ' לו השליח כי כן התקנ' ואם יסרב[13] ינדוהו הקהל או אותו הרב ע"י השליח וכן יש כח לתובע לבטל התמיד באות' העיר לכתו' ההזמנ' ובעיר שיברור[14] התובע מן הג' גם יכול לבטל תפלה כשילכו שם עד ישבו ג' מהם לב"ד ואם לא בא עליהם לכתוב שלא בא.

1 ב. ג. או יש הוכחה כדפי"ל.
2 ב. ג. דברים רעים יותר מן הראשון.
3 ב. ג. להסיר.
4 ב. ג. ובדברים שאמ'.....שאמ' הראשון. ח'.
5 ב. ג. שצריך לאומרו עבור להציל.
6 ב. ג. לכל דין וקנס ח'.
7 ב. שיבר. ג. שיבא.
8 ב. ג. מג' הערים.
9 ב. ג. מב"ד חשוב שבארץ מרחק.
10 ב. ג. ומ"מ ח'.
11 ב. ג. כבי תרי.
12 ב. ג. באחד משני.....כי כן התקנה ח'.
13 ב. ג. יסרב הנתבע לבא לב"ד.
14 ב. ג. אשר יברור מהג' עיירות שיברור הנתבע יכול התובע לבטל התמיד.

א	בג
	ובחקנ' זו רגילי' היו גדולי' להזמין תוך ג' ימים מתקנת ר"ג.
35. אין לנפקד לעכב ספרים הנפקדים אצלו בשביל שום תביעה וטענ' שיש לו על המפקיד או על המשאיל והוסיף ר"ת על ישראל ועל כל זרעם לעולם שלא לעכב שום פקדון בשביל שום תביעה מלמד יכול לעכב ספר שלמד בו בעד שכירותו לבד ובעבור זמנו	אין לנפקד או לשואל לעכב שום ספרי' הנפקדי' או הנשאלים אצלו בשביל שום טענה שיש לו על המפקיד רק מלמד תינוקות יכול לעכב ספר שלמד בו בשביל שכירותו לבד ובגלל זמנו אבל בשאר דברים הרי הוא ככל אדם.

36. ואיש שהטילו עליו מתנה וגובין[1] ממנו ע"י עבד הפקוד אין לו כח להזמין המגבה או המטיל לב"ד עד יפרע מי [צ"ל מה] שהטילו עליו בממון או במשכונו' אז יכול להזמין כל אשר יעשה לו שלא כדין ואף קודם שיפרע לו מתנתו אם יראה שהמטיל עושה לו שלא כדין מן המתנה עצמה יש לו כח לבטל התמיד להיות [קובל] עליו בלא ב"ד עד יעשה לו כשורה לפי ראות עיני הקהל דאל"כ יקח כל אשר לו ע"י גוים ויאמ' בשביל המתנ' אני עושה זאת.

א	בג
37. ואיש לא ירחיק וישהא מאשתו יותר מי"ב חדש אם לא ברשות'.	ואיש לא ירחיק אשתו יותר מי"ח חדשים אם לא ברשותה.

38. ואם דרים[2] בכפרים שאין להם מנין בעירם ובאים למקום קהל למניין ביו"ה והביאו[3] שם נרות גדולות שקורי' צירייש בלע' בבית הכנסת אם לא עשה כ"א אחד יניחנו בב"ה שהדליק שם ויכולים בני העיר להכריחו להניחו שם או יניח חצי לי' [ליטרא] שעוה ואז יוכל לעשות נר גדול ומהודר כרצונו ואם עשה שנים יניח האחד והאחר יוכל לישא עמו להדליק למקום שמתפלל שם.

39. וכל נדר שאדם נודר בב"ה ישלם באותה העיר כמנהג [אנשי] אותה העיר ותקנת' אם יש שם מנין[4] קבוע.

1 ב. ג. ובאו לגבותה.
2 ב. ג. אחד מבני הכפרים.
3 ב. ג. ומביאין נרותיהם שקורין שיראנאש בב"ה.
4 ב. ג. מנהג קבוע בעיר.

40. עו' תקן ר"ת ובית דינו למכה חברו לקונסו כ"ה די' טורנייש וזה לא פשט כאן[1] ואם[2] הכה בב"ה נ' די' לכבוד שכינ'.

41. מתה אשתו תוך שנת נישואיה ישלם החתן כל[3] מה שקבל לבד ממה שהוציא.

א	בג
	ע"כ תקנו' ר"ת קבלו עליה' בגלות הזה לעולם ועל זרעם

42. יש חרם גאוני' שמ[ש]נכנס אדר עד פורים כל רוכבי על סוסי' והולכי דרך ערים שיש שם מנין קבוע שיפרעו שני פשיטי' ממטבע העיר למעות פורים לחלק לעניי אות' העיר לפורים אם[4] יתבעם איש מאות' העיר ואם אין איש תובעם פטור הוא[5] מן החרם ושלום על ישראל.

א	בג
ע"כ חרמות ר"ת שקבלו עליהם ישראל שבגלות אדום עליהם ועל זרעם לעולם והעובר עליהם יש ב"ד להכריח העבריין עד יתקן הדבר.	
43. תקנת הגאונים לשים חרם עליהם בלא זמן שנ' קיימו וקבלו עליהם היהודים ועל זרעם ועל כל הגלוים עליהם אלו גרים וכתי' אשר איננו פה אך יכולי' להתיר' ליחיד בעת הצורך וביש טעם כדפי' לעיל, וי"א כשהוא (לקמן) [לזמן] אף הזמן צריך התרה שנ' והיו נכונים לשלשת הימים אל תגשו אל אשה (שמות יט. טו.) והתיר' שובו לכם לאהליכם (דברים ה. כז.) להתיר בתשמיש המטה ואמ' ר"י שאותו איסור היה לעולם ולכך צריך התרה אך בתוך הזמן יכולים להתיר מכל וכל וכן משבועה והכי פי' היו נכוני' לקבל	וחרם שמשימין קהלות יכולי' להתיר לעת הצורך וי"א כשהיא לזמן אחר הזמן צריך התר' ומביאי' ראי' מנ' ימי' אל תגשו אל אשה (שמות יט. טו.) והוצרך לומ' שובו לכם לאהליכם ואומ' ר"י דהתם מירי דנאסר להם תשמיש עולם כל אותם נ' ימים קודם שבועו' לכך הוצרך היתר ואומ' ר"ת משום ק"ו היה אסור ומה קודם מתן תורה נאסר נ' ימים אחריה נ' ימים (?) לכ"ש ולכך הוצרך התר

1 ב. נ. כאן ח'.
2 ב. נ. ובב"ה כפול.
3 ב. נ. כל ח'.
4 ב. נ. אם יתבעם....העיר ח'.
5 ב. נ. הוא.....ישראל ח'.

א	בג
תורה לג' ימים אל תגשו אל אשה לעולם שהרי האתנחת' בימים ולכך הוצרך התרה. ופר"ת ק"ו אם קודם מתן תורה אסורי' בשביל שעתידי' לקבל התורה כ"ש אחר שקבלו התור' שיהו אסורים לעולם מחמת קדושת התורה שביניהם לכך היה צריך התרה ולומ' שובו לכם לאהליכם.	
44. רגילי' הקהל לברך אחר הטלת חרם דאמ' הקב"ה למשה מאחר שקבלו ישראל את התור' צריך לברכ' שג' ולמוכיחי' ינעם ועליהם תבא ברכ' טוב (משלי כד. כה.) ולכך אמ' ואת הברכ' אחר נצבים.	
45. מותר לדבר לעבריין שעבר החרם ונמנה בי' דכתי' ולא תמותו הא אם תעשו תמותו וכן מכלל לאו אתה שומע הן סעד לברכ' במקום חרם.	מותר לדבר עם עבריין שעבר על חרם ונמנה בעשירי.
	צץ המט' גזרו' רבי שמואל ב"ר מאיר ור"ת אחיו עכ"ל תקנות רבינו גרשון מאור הגולה.

CHAPTER VI.

PROPOSED TAKKANAH OF R. PEREZ

The text of this proposed Takkanah was taken by Guedemann (I. 263) from a Halberstam manuscript, which is now part of the Montefiore Library (Hirschfeld 130). We do not know whether the proposed Takkanah was ever approved by the Rabbis to whom it was sent. It consists of two sections, the first providing that any man might be compelled to undertake by a *herem* or oath, that he would not strike his wife again. He might be compelled to undertake this *herem* on the complaint either of the wife, herself, or of one of her near relatives. Secondly, it provided that if the husband refused to undertake such a *herem*, the Court should assign the wife alimony as if the husband were away.

Guedemann's text has been compared with a photograph of the manuscript and only one slight change has been necessitated. Nevertheless the text is included here for the sake of completeness.

קול שועת בנות עמינו ממרחק נשמע על אודות בני ישראל המרימים זרועותיהם להכות נשותיהם ומי השליט האיש בעניין הזה להכות אשתו הלא הוא מוזהר ועומד שלא להכות שום נפש מישראל וגם ר"י השיב בתשובה כי מנ' רברבי ואינון רבינו שמואל ור"ת ור"י אחין בני רבינו מאיר שמיע ליה שהמכה אשתו כמכה אחר והנה שמענו כי יש מבנות ישראל צועקות על זה ואינן נענות תוך קהלות לכן נזרנו בתקף גזרה ואלה על כל איש מישראל ליכנס בחרם לבקשת אשתו או לבקשת אחד מקרוביה הפסולים לה להעיד שלא להכות אשתו דרך כעס או דרך רשע או דרך בזיון כי כן לא יעשה בישראל ואם ח"ו יש שרש פורה ראש ולענה אשר ימרה את פינו לבלתי היות יראו וחרד לזה הודענו לב"ד של אותו מקום שתבא שם צעקת האשה או צעקת קרוביה לפסוק לה מזונות לפי כבודה לפי מנהג בנות המקום אשר היא דרה שמה לפי ערכה ויפסקו לה מזונות כאלו הפליג בעלה ממנה והלך בדרך רחוקה ואם יסכימו רבותינו הגדולים אשר בארץ לגזירתינו גזירתינו קיימת ויקום דבר ושלום נאום פרץ בן ה"ר אליהו זצלה"ה.

TRANSLATION

The cry of the daughters of our people has been heard concerning the sons of Israel who raise their hands to strike their wives. Yet who has given a husband the authority to beat his wife? Is he not rather forbidden to strike any person in Israel? Moreover R. I(saac) has written in a responsum that he has it on the authority of three great Sages, namely R. Samuel, R. Jacob Tam and R. I(saac), the sons of R. Meir, that one who beats his wife is in the same category as one who beats a stranger. Nevertheless have we heard of cases where Jewish women complained regarding their treatment before the Communities and no action was taken on their behalf.

We have therefore decreed that any Jew may be compelled on application of his wife or one of her near relatives to undertake by a *herem* not to beat his wife in anger or cruelty or so as to disgrace her, for that is against Jewish practice.

If anyone will stubbornly refuse to obey our words, the Court of the place to which the wife or her relatives will bring complaint, shall assign her maintenance according to her station and according to the custom of the place where she dwells. They shall fix her alimony as though her husband were away on a distant journey.

If they, our masters, the great sages of the land agree to this ordinance it shall be established.
Perez b. Elijah.

CHAPTER VII

TAKKANOT OF THE RHINE COMMUNITIES

TEXT A. THIRTEENTH CENTURY

In discussing the Takkanot of R. Gershom (above Chapter I) we noticed that one of the sources of these Takkanot are the ordinances of the Rhine communities into which they were incorporated. The text in which those Takkanot are incorporated among the other ordinances of the Communities, is the one printed in the responsa of R. Meir b. Baruch (ed. Prague, 1022). We will refer to that text as M (Heb. מ).[1] Another recension of ordi-

[1] The same text occurs with a few insignificant changes, most of which are corruptions, in Res. R. Moses Mintz, 102. No note has been taken of the variants of that text except where it shows a clear improvement.

After the above was in press I received through the courtesy of Dr. Hirschfeld of the Library of the Jews College, London, a photograph of a Montefiore Ms. (Cat. Hirschfeld, 146) which contains another version of text M. The variants from this text which will be referred to below as MA, are given below under the Hebrew notation מא.

This text is of great interest as it verifies definitely certain hypotheses set forth above. It proves beyond question that Rosenthal (*Monatsschrift* 45.245) was right in maintaining that the synod of Mayence which adopted the ordinances found in M, took place in 1220, and that R is the work of a later synod held in Speyer in 1223. It is impossible to suppose with some of the earlier writers on the subject that תתקף in M is to be emended into תתקפג, since the reading of M is now corroborated by MA.

Moreover this text does not contain the Takkanot of R. Gershom, thus showing that originally M, or the ordinances adopted in Mayence in 1220, did not contain them, but that they were added by the subsequent synod held in the following generation. MA is a transcript of the original decision taken in 1220; M, on the other hand, is a transcript of those decisions as they were re-worked at the synod held between 1240 and 1250. Hence M contains immediately after the Takkanot adopted in 1220, those adopted at the later synod. MA does not contain them, but a reference to them is made, obviously by the later scribe who knew of the second synod. These ordinances are added

ances of the Rhine Communities was published by Rosenthal from a Halberstam manuscript which is now in the possession of the Montefiore Library (Cat. Hirshfeld 130). We shall call that text R (Heb. ר). There is a third recension which is to be found in a Zunz manuscript, which too is at present part of the Montefiore Library, (136 of the same catalogue). This last text we shall call Z (Heb. צ).

Aside from these three sources which contain practically complete texts, part of the Takkanot, namely the sections dealing with the matter of *Halizah*, are quoted in a responsum of R. Meir b. Baruch. This responsum is not found in any of the collections, but is quoted at length in a Bodleian manuscript (Hunt. 221, Neub. 820, Heb. ז) as well as in the *Yam shel Shelomo* (*Yebamot* 4.18) of R. Solomon Luria (Heb. ס), and in a responsum of R. Moses Mintz (no. 10), referred to in the Hebrew variants as ע.

In the following pages the three texts are printed in parallel columns where they differ considerably from each other; but where the differences are not of outstanding importance, the Zunz text is taken as standard, since as will presently be shown it is probably the oldest of the texts. The different readings from the other texts, as well as the readings suggested by the responsum of R. Meir, are given as variants. The Takkanot of R. Gershom are not printed at the end of M, but it must be borne in mind that in that text they appear immediately before the concluding paragraph. After the names of the signers, there follows in M the text of a Takkanah of a synod of the following generation which has been printed in full.

A cursory examination of the parallel texts as they are arranged below, whether in the original or in translation,

after a reference is made to the ordinance of R. Samuel b. Meir and R. Tam against informers and that of R. Tam providing for the restitution of the dowry in case of the death of the wife. (Above, Chapter IV, Texts A and B). Indeed it is definitely stated that the Takkanot of 1220 were re-ordained at the later synod. The text reading as follows:

ותקנ' זו מאבותיו הקדמוני' ונתחדש הכל בימי רבי' משלם ורבי' דוד ורבי' משה בר יהוהה הכהן וכל קהל שום כתבו וחתמו

will show that the three recensions are the work of three distinct synods. The differences between the recensions are not merely matters of reading, but there are actual differences of ordinances, many sections which occur in one being missing in one or both of the others. The main body of the ordinance is, however, identical in all three. This shows that the later synods in the main re-enacted the Takkanot of the earlier synods, but added such new ones as appeared to be required by new conditions. In this the Jewish synods were not unlike the Church councils. We find in them, too, that the same enactment were enacted in council after council.

M is definitely dated, Mayence, 1220. R has been proven by Rosenthal (M. G. W. J. 45.244 ff) to have been enacted at Speyer in 1223. The date and place of the synod which enacted Z remains to be determined.

In section three the names of the three communities are given in the following order in M; Mayence, Worms, Speyer.

in R; Speyer, Worms, Mayence.

in Z; Mayence, Worms, Speyer.

It is to be assumed *a priori* that the council would name first the city in which they happened to meet. We know that this was the case with council of 1220 (M), since that is stated to have taken place at Mayence, and the name of that city heads the list. It is on the ground that Speyer heads the list in R, that Rosenthal assumes that the synod of 1223 took place in that city. Since Mayence heads the list in Z, we are led to suppose that it, like M, was composed at Mayence.

The settlement of the date of the synod is not so easy. One of the signers of Z was R. Baruch b. Samuel. He was also one of the signers of M, but he died in 1221 before synod of that established text R was convened. Since he is named among the singers of Z, that could not have been enacted after 1221. But it is highly improbable that the three synods would have followed one another as closely as 1220, 1221, 1223. It is far more likely that synod responsible for Z took place before synod of 1220 (M).

This is further corroborated by a study of the texts. But one example need be cited here. Section 3 reads:

צ	מ
אם ינזם אדם את חברו בפני עדים אני מפסיד את ממונך אם יפסיד אותו היהודי יחייבו את המזם לפרוע כפי אשר נשבע הנפסד שהפסידו ואם יש עדים כמה הפסיד יפרע לו המסור והמלשין יהא פסול לשבועה	ואם ינזם אדם לחברו בפני עדים להפסיד לו [ממונו] אם יפסיד אותו יהודי יחייבנו ב"ד המזם לפרוע כפי שנשבע הנפסד כמה הפסיד ואם יש עדים שהפסיד יפרע לו המסור מיד ואם יש עדים שהלשין את חבירו יהיה פסול לעדות ולשבועה

Z	M
If a man threatens his neighbor, in the presence of witnesses saying, "I will cause you loss of money, by giving information to Gentiles," if then that Jew suffers harm at the hands of Gentiles, the Court shall compel the intimidator to pay, whatever amount the victim claims under oath. If there are witnesses to the amount of the damage, the informer must pay that. The informer shall be declared unfit to take an oath.	If a man threatens his neighbor in the presence of witnesses, that he will cause him loss of money, if then that Jew suffer loss, the Court shall compel the intimidator to pay whatever amount is claimed by the victim under oath. If there are witnesses that he suffered loss the informer must pay immediately. If *there are witnesses* that he gave information against his neighbor he shall be considered unfit to act as a witness or to take an oath.

Even a cursory reading of the two texts will show that Z is the older. The word והמלשין of Z, is replaced in M by ואם יש עדים שהלשין. The words ואם יש עדים are evidently an insertion, following as they do on the words ואם יש עדים שהפסיד of the preceding line. The insertion was made because it was feared that Z might be misunderstood. The oath of an alleged victim of denunciation was sufficient to compel the defendant to pay, if there was

circumstantial evidence against the informer, e. g. if he made threats of denunciation. It is not deemed sufficient to make him unfit to take an oath. To deprive one of his right of taking an oath in a Jewish court, the ordinance demands testimony which would be accepted according to the Talmud.

While in this case it is clear that the original text of M read differently from Z, because we find the same reading in R as we do in M; in other cases we cannot be certain that the text of M has not been changed by later writers. Indeed there is good reason to believe that later synod did revise this text. In the concluding paragraph of M, we read: "We have renewed now, in the year 4980 (1220), what our ancestors ordained many years ago, here at Mayence, by a severe *herem*, except for the ordinances of R. Gershom, the Light of the Dispersion, b. Judah, which are very many and are well-known and did not need renewal." It is evident then, that the Takkanot of R. Gershom were not renewed at the synod of 1220. Yet just before this paragraph we find the complete list of the Takkanot of R. Gershom (see Part II, chapter 1). The Takkanot R. Gershom must have been inserted in the text at a later time. It is likely that those who introduced that change in the text, also introduced other changes.

These changes appear to have been made in this Takkanah by the Rabbis of the generation after 1220. We find a Takkanah of theirs attached to M, forbidding the excommunication of any member of a Community except in the presence of the Community. That Takkanah was ordained at Mayence, and probably for that reason, is attached to the text of M, which also was enacted there, rather than to R, which was enacted at Speyer.

That this later synod was held after the year 1238, is evident the fact that neither R. Eliezer b. Joel Ha-Levi (who died in 1235) nor R. Eleazar b. Judah (author of the *Rokeah*, d. in 1238) is mentioned in connection with it.

On the other hand there is mentioned among the signers of this Takkanah אבהרי"ח. This is taken by Bruell to mean

R. Asher b. Yehiel, (*Jarbuecher*, VII 89). That, however, has been denied by A. Freimann, in his *Ascher b. Yehiel* (Frankfort, 1918) p. 7, note 8. The latter assumes the synod to have taken place about 1240, and as R. Asher was born about 1250, he could not have attended the synod.

Now in 1241, R. Isaac Or Zarua carried on an active discussion with R. Judah b. Moses Ha-Kohen, R. Meshullam b. David, and R. David b. Shealtiel, as to whether a woman who had been violated during the massacre at Frankfort in that year, might remain with her husband after the outrage (*Or Zarua*, I, 747; HOS 221, 222). It would appear then that at that time he was still in Germany. If the council took place about that time, we would have expected him, as the foremost scholar of Germany, to have attended it.

It may be that this synod took place as late as the year 1270. We know that was about the time of the death of R. Isaac b. Moses Or Zarua. It is likely that the three correspondents of his, R. David b. Shealtiel, Meshullam b. David, and R. Judah b. Moses Ha-Kohen, who were younger than he (HOS loc. cit.) survived him. In that case R. Asher b. Yehiel might have been present at the synod. We could still have to meet the difficulty of the absence of R. Meir b. Baruch from the council. We cannot therefore consider the matter definitely decided until more information is available regarding the lives of the members of the council.

To return to synod Z, we have seen that it was the earliest of the synods whose enactments have been preserved. But it was not the first of the synods of the Rhine communities. There is incorporated in it the Takkanah regarding *Halizah*, which we learn from R, was ordained by a synod under R. David of Muenzberg in the year 1196; R. David, apparently, reorganized the Rhine confederation immediately after the Third Crusade. This Takkanah is the oldest part of the Ordinances of the Rhine Communities.

But there are other traces of the synods which were held between the years 1196 and the time of the Z-synod. Text Z appears on examination to be the result of a develop-

ment. Just as we have seen in the case of the Takkanot of R. Gershom, (above, chapter I) and in the case of the Takkanot of R. Tam (above, chapter V) so in the case of the Takkanot of the Rhine Communities, must we assume that the writers of the original text had in their minds a definite order of arrangement of their various orders. It is only when additions were made, that the order originally intended was obscured. Thus if we examine the text of the Rhine Communities, we will find that the arrangement was along the following lines:

I. Miscellaneous injunctions regarding Biblical and Rabbinic prohibitions, paragraph 1.

II. The power of the Court in the matter of summons and the new law of evidence in cases of denunciation to Gentiles, paragraphs 2 and 3.

III. Taxes, paragraphs 4, 5, 6, 9.

IV. Attempts to influence Jewish communal life through non-Jewish agencies, paragraphs 10, 11, 15, 16 19.

V. *Halizah*, paragraph 20.

Now there are several insertions of foreign Takkanot in the midst of these, for instances the ordinance against sumptuous dinners is inserted in the midst of those regarding the relations of Jews to Gentiles. It is noteworthy that almost *all of the basic ordinances of the outline just described are common to the three texts, Z, M, R.* But the insertions in M are usually other than those in Z. R. adopts the insertion both of M and Z.

These facts tend to show that there must have been an earlier version of the Takkanot of the Rhine Communities which in all likelihood contained only the basic Takkanot described under the five headings above.

It is thus clear that we have before us in the three texts, Z, M and R, a record of more than half a century of synodal activity in the Rhine Communities. We can trace the development of the work inaugurated immediately after the Crusade by R. David of Muenzberg, till the time of R. David b. Shealtiel. The larger aspects of this interesting phenomenon in Jewish life, have been discussed in Part I, Chapter IV.

צ

1. בהתאסף ראשי עם יחד גזרנו בשבועת האלה בתפיסת חפץ וכל העם בברית על בן ברית שלא יאכל עם אשתו בימי לבונה עד שתטבול בזמנה.
ולא ילוה כסף לחבירו כי אם למחצית שכר ולמחצית הפסד בהיתרא ע"פ רבותיו.
ולא יספר קומי ולא יגלח זקנו לא בתער ולא כעין תער.
ולא ילך בבלורית.

ר

נחנו גזרנו בתפיסת חפץ נחנו הח"מ על החתום אשר כל בן ברית לא ילך במלבוש נכרי ולא ילך ברהיטי חלולי בתי זרעות.
ולא יהיה לו בלורית מספר קומי.
ולא יגלח זקנו לא בתער ולא כעין תער.
ולא יאכל איש עם אשתו בימי לבונה עד שתטבול בזמנה.
ולא ילוה לחבירו כסף כי אם במחצית שכר ולמחצית הפסד.
ולא יתן אדם את יינו בחבית של גוים אם לא יעשה עירוי או ירתיח החבית.
ולא יניח הגוי לדרוך היין.
ולא יאכל שלקות של גוים.
ולא ישתכר ביין נסך.
ולא יעשה שקרנית ולא גלוח מעות.
ולא יניח לגוי ליתן מים בקדרה בשבת.

מ

צץ המטה ופרח הזדון והחמס קם למטה הרשע ואין נושע וכבר אין עין השע וקול שועת אומללים בת עמינו עלתה באזנינו ונאנחנו ונקשרנו וגזרנו בנידוי ובאלה ובנקיטת חפץ נחנו החתומים
שלא ילוה אדם כסף ולא מעות[1] לחבירו כ"א למחצית שכר ולמחצית הפסד.
ולא ישים יינו בחבית של גוים אם לא יעשה עירוי או הגעלה לחבית.
ולא יניח הגוי לדרוך היין.
ולא יאכל שלקות של גוים.
ולא יעשה שקרנות ולא גלוח מעות[2].

2. המזמין[3] את חבירו לדין שלא יסרב יותר משלשה ימים.

3. אם יגזם אדם את חבירו[4] בפני עדים אני[5] אפסיד את ממונך אם יפסיד

1 מא. ולא מעות ל'.
2 ולא גלוח מעות] מא. ולא יעשה מעות ולא יקרא כתב החתום לחברו.
3 מ. ר. וכל מי שיסרב.
4 מ. לחברו בפני עדים להפסיד לו.
5 ר. אני מפסיד את ממונך.

אותו היהודי יחייבו[1] את המגזם לפרוע כפי אשר ישבע הנפסד שהפסיד[2] ואם יש עדים כמה הפסיד[3] יפרע לו המסור[4]. והמלשין[5] יהא פסול לשבועה ויהיה[6] בנידוי כל הקהלות עד שיפרע לחבירו וגם[7] יעשה דין במנצא ובוורמישא ובשפירא.[8] מנודה לעירו מנודה[9] לעיר אחרת.

4. מי שיש לו ספרים מופקדים[10] לא יהיו הקהל רשאים למשכנו[11] עבור המס[12] שחייב בעל הספרים.

5. ואם נשבע[13] לקהל שאין[14] לו כי אם כך וכך[15] כסף ולבסוף[16] נודע כי יש לו יותר ונשבע על שקר יהיה[17] פסול לעדות ולשבועה ואותו[18] שכנגדו נשבע ונוטל.

צ	ר	מ
	6. ולא יפטור אדם עצמו מן המס בשביל שרוכב בחצר המלך ולא יכה איש את רעהו.	ולא יפטור אדם עצמו מן המס לפי שרוכב בחצר המלך.
7. ואם המלך או ההגמון יאמר לשום יהודי תן לי כך וכך או תלוה לי כסף או יקח לו שוה כסף ישתתפו לו כל	ואם ילשין אדם את חברו למלך או להגמון או לשלטון ויזיק לשום יהודי או בחוב או בהלואה ישתתפו ויעזרו כל הקהל	

1 מ. יחייבו אותו ב'ד. ר. יחייבוהו ב'ד להמגזם.
2 מ. כמה הפסיד.
3 מ. שהפסיד. ר. שהפסיד את חבירו.
4 מ. מיד.
5 מ. ואם יש עדים שהלשין את חברו יהא פסול לעדות ולשבועה. ר. ואם יש עדים שהפסיד יהיה פסול לשבועה.
6 מ. ר. ויהיה.....כל הקהלות ל'.
7 מ. ויקבל דין מנ' קהלות מענץ ווירמשא שפירא. ר. ויעשה דין לחברו בנ' קהלות בשפירה וירמס מנצא.
8 מ. ויהא בנדוי כל הקהלות עד אשר יתקן קלקולו כאשר יורוהו טובי העיר. ר. ויהיה בנדוי בכל הקהלות עד יתקן עותתו כאשר יורוהו טובי העיר.
9 מ. מנודה לכל מקומות.
10 מ. המופקדים אצלו. ר. הממושכנים אצלו.
11 ר. למשכנם.
12 מ. ר. שום מס.
13 מ. ר. ואם ישבע אדם לקהלו.
14 ר. שיש לו כך וכך ליתן מס.
15 מ. כך וכך ליתן ממנו מס.
16 מ. אם יודע לקהל. ר. וידעו הקהל שיש.
17 מ. אותו האיש פסול.
18 מ. ר. ואם יתבעהו שום אדם ממון ישבע זה שכנגדו [מ. וישלם].

צ	ר	מ
הקהל רק שלא יהא בהגרמתו.	בהפסדו רק אם יהיה בהגרמתו או כל הקהל פטורין ולא ישתתפו עמו ולא יקחו בחורים מחתונה כ"א ו"פ ממטבע המלכות בחורים אשר יהיו עם החתן לא יהיו רשאים ליקח שום דבר מבעלי בתים ולא יגבו הבחורים וכל אדם יהיה עם חברו בשלום.	ולא יקחו הבחורים [בחתונה] מן החתן[1] כ"א ו' פשיטים ממטבע של אותה מלכות והבחורים שעם החתן לא יגבו שום דבר משום אדם לא תרגולת ולא דבר אחר.
9. ואם היחיד יש לו שום תביעה על הקהל מפני המס או מדברים אחרים יתן לקהל מה שישאלוהו אך הקהל יבאו עמו לדין אע"פ שאין נוגעין בדבר והיחיד כאילו תפוש את שלו ומה שיפסקו יעשו ב"ד כמשפט אם יעבור שום אדם חרם יש לקונסו ולהלקותו.	ואם יהיה שום אדם שיקחו לו הקהל מס או כל דבר שיהיה לו ליחיד על הקהל יתן אותו היחיד את אשר ישאלוהו הקהל אך הקהל יבאו עמו לדין במקומם לפני אותן שאין נוגעים בעדותן של דבר ואם לא ירצה ויעבור תקנת אלו יהיה בחרם ונדוי כל הקהלות ואם ישהה במרדו חדש ימים יהיה ממונו מותר למסור למלך וגם קבלנו עלינו לשמור החרמות אם שום אדם יעבור החרם יש לקונסו ולהלקותו.	ואם הקהל שואלי' מס מן היחיד או כל מה שיהי' ליחיד על הקהל יתן אותו יחיד לקהל אשר ישאלהו אך הקהל ירדו לדין עמו במקומם[2] לפני מי שאינם נוגעי' בעדות[3] ויחיד כאלו תופס את שלו ואין כאן מוציא מחבירו וכל אשר יעבור על תקנות הללו יהיה בנידוי כל הקהלות ואם ישהא במרדו חדש ימים יהא ממונו מותר למסור למלך או לשלטון והעובר מתקנתינו יש לאל ידינו לקונסו לפי דעתינו.

10. ויש לקלל המלשינים כל שבתות[4].

11. וכל מי שיעמיד חזן[5] או גלילת התורה[6] או כל צרכי צבור[7] ע"פ גוים יהא בנידוי ובשמתא ובאחרמתא מי שיעשה הדבר הזה וגם המתפלל והגוללל[8] או מי שעוסק על פי גוים שיהא הגוי דן את ישראל יהא בנידוי כי יש לעשות ע"פ דיני ישראל.

1 מא. מן החתן לחתונו.
2 מא. במקומו.
3 מא. לפי שאינם נוגעים בדבר.
4 מ. ר. בכל שבת.
5 ר. סנן.
6 מ. ר. ס"ת.
7 ר. הקהל.
8 מ. ר. והגולל ל'.

צ	ר	מ
12. ואין לשחוק לא עם גוי ולא עם ישראל עבור מעות ולא עבור לאכול ולשתות לא ליתן המעות בלא אכילה.	ואין לשחוק לא עם גוים ולא עם ישראל עבור מעות אך עבור לאכול ולשתות (כ"א) בחולו של מועד או בבית חתנות עבור אכילה ושתיה [מותר] ולא יתן מעות עבור אכילה.	

13. והפרנס אין[1] לו להשים חרם בחשאי או להתיר חרם בלא דעת הקהל[2] ולא רב ברבנותו[3] כי אם ישים החרם או יתיר מעמד[4] הקהל.

14. ולא יסגור אדם בית הכנסת אם לא יושיב הקהל פעמים ושלש והקהל ישמעו דבריו ויעשו לו משפט ולא יקבל אדם לא במנחה ולא ביוצר ולא בשבת ולא ביום ההלל.	ולא יסגור איש בבית הכנסת אם לא ישיב הקהל פעמים ושלש והקהל ישמעו דבריו ויעשו משפט ולא יקבול כי אם בסדר .קדושה.	

15. ולא יפרוק אדם שום [עול] ממנו על פי גוים.[5]

כל זה גזרנו בחרם ובשמתא

16. ולא יגלה שום סתר לגוים.

17. ולא יעשה לא איש ולא אשה סעודת הרשות אך אם יהיו לו אכסניים ויאמר לחבירו לאכול עמו או נשים לפני היולדת או בי"ט זה מותר.	ולא יעשה לא איש ולא אשה סעודת רשות אך אם יקיז דם או אם יהיו לו אכסנאים יאמר לחברו לאכול עמו או נשים בפני יולדת או בי"ט זה מותר ולא יקבול אדם ביום קריאת ההלל אך הקהל יכולים לקבול לעשות צרכי צבור.	

1 מ. אין לעשות [מא. חרם] בחשאי.
2 מ. כל הקהל.
3 מ. לא ישים חרם על שום אדם ולא יתיר חרם הקהל כ"א במעמד כלם.
4 ר. במעמד כלם.
5 מ. כל זה גזרנו בחרם ובשמתא.

18. ואל יתפלל אדם ברא' השנ' וביום הכיפורי' בלא דעת קהלו אך החזן יכול להתפלל ביום ראשו' של רא' השנ' ובליל כפור וביוצר עד מוסף[1] אך ביום שני של ראש השנה ובכיפור במוסף למעלה הוא ברשות הקהל ואם החזן חלש שאינו יכול להתפלל אז הקהל יניחו[d] להתפלל כפי דעתם.

19. ולא[2] יעלה על לב איש לצוות לדייני ישר' שלא ישבו בדין ולא יפתחו הדין כל אילו הדברים גזרנו[3] על פי החרם.

20. וגם[4] ציוינו[5] לשמור תקנתנו שקיבלנו עלינו שהיבם אינו יכול לענן היבמה[6] כי נכסי מלוג שלה אין[7] לפחות לה והנכסים שבאו לה מחמת בעלה קרקעות וספרים ונחלת אבותיו יסדרו ביניהם בל תיסוב נחלה לבית אב אחר ואם הם מקנתו ולא אחוזתו יחלקו[8] לפי עיניהם הרואות הישר בעיני בוראם וגם[9] המטלטלין יש לסדר בשער[10] העיר על היבם[11] ועל היבמה כפי דעת החכמים ולא ישנו דבריהם ימין ושמאל[12] אין[13] לפחות ליבמה מן נכסים[14] שהביאה לו ויפטור[15] את יב מתו בלא איחור ובלא[16] חימוץ מצוה. ואם היבמה ארוסה יש לו ליבם לחלוץ אחר ג' חדשים חוץ מיום שמת בעלה יחלוץ בלא איחור ואין רשאי לשאול דבר והיבמה[17] יש לה לישבע מה שיש בידה מן הנכסים ויש[18] לחכמים לבצע ולסדר מן[19] היבם והיבמה שהיתה

1 כ. בלא דעת קהלו.
2 מ. ולא יצווה אדם לדייני ישראל. מא. ולא יצוה איש לדייני ישראל.
3 ר. גזרנו וקבלנו.
4 נתקנות החליצה האלה נמצאות בנוסחא מ. אחר כל התקנות האחרות אבל רשמתי את השנויים פה להקל על הקורא. בנוסחא ר. כתוב: תקנה על דברהחליצה כבר היא כתובה למעלה מעבר לב' דפין בדף רמ"ט. כך קבלו כל הקהלות על פי החרם על פי ר' דוד מאינצבורק שנת נ"ו. בשו"ת מהר"ם מינץ סי' י' ובים של שלמה יבמות פ"ד סי' י"ח הובאה תשובת מהר"ם בר ברוך אשר בה הועתקה זאת התקנה בשלמותה. וגם היה לפני כ"י אחד מאוצר הספרים באקספרד שגם שם נמצאה התשובה. וכל השנויים שאני מציין בזה הם על פי הסימנים המפורטים במבוא האנגלי לפרק הזה].
5 מ. וגם גזרנו שהיבם. נ. ס. ע. בתמוז בתתקפג [ע. בתתפ"נ] לפ' נועדו רבותי [ס. רבי' הח"מ] וז"ל תקנתם וגם ציוינו לשמור תקנתינו שהיבם.
6 ס. יותר מג' חדשים.
7 ס. אין להם.
8 מ. יחלקו ביניהם [מא. שמא יש] הישר בעיני בוראם. ס. יחלקו לפי ראות עיניהם.
9 מ. נ. ע. ומן. מ. וגם.....ושמאל ל'.
10 מ. טובי העיר. נ. ע. לטובי העיר
11 מ. בין היבם ובין היבמה. נ. על היבם והיבמה.
12 מ. ולא.....ושמאל ל'.
13 מ. ודאי אין.
14 נ. ס. ע. מנכסים. מ. מן הנכסים.
15 ס. ויפטור אותה.
16 ס. ובלא חמוץ מצוה ל'.
17 מ. נ. ע. והיבמה תשבע.
18 מ. ויבצעו החכמים אם היתה נשואה.
19 נ. ע. בין.

נשואה יש לה[1] לחלוץ בלא איחור והיבמה[2] תלך אחר היבם להתירה אם הוא בעיר אחרת[3] ואם ימרוד[4] היבם נגדוהו[5] עד שיאמר רוצה אני לעשות[6] כרצון חכמים.

21. וגם ציוונו[7] בכל נישואין שיתנו שומר יהודי שלא יניחו להשליך סמי ליורה שיש להם לאכל בשבת[8].

22. וגם[9] לא יהא אדם רשאי להשליך[10] גט לאשתו בלא רשות שלש קהלות[11] ואם יעשה יהיה הבעל והעדים בנידוי[12].

23. ולא יאמר אדם לחבירו ממזר או פסול ממשפחה כל זה גזרנו על פי החרם.

צ	ר	מ
24. וגם הסכמנו וציוינו להביא מעשר או צדקה כפי מה שיאמרו הקהל.	וגם גזרנו להביא המעשר כפי מה שיאמרו הקהל.	
25. ובמקום שאין מספיקים במה שנותנים ללמד תנוקות יקחו ממה שמניחין להזכיר נשמתו ויתנו למלמדים אם לא פירש השכיב מרע לצורך מה והמותר יתנו למקום שחפצים הקהל.		ובמקום שאין מספיקים במה שנותנים למלמדים של התנוקות שאין מספיק ההקדש שאין להם כל כך יקחו משאר הקדשות שהניחו נוחי נפש עבור נשמתן ויתנו למלמדים (למלמדי תנוקו') אם לא פירש השכיב מרע לצורך מה והמותר יתנו (הקהל) במקום שרוצים הקהל.

1 נ. ע. לו. מ. יש לה. בלי איחור ח'.
2 נ. ע. והיבמה הולכת. ס. והיא תלך.
3 מ. נ. ותיפטר מ. ויפטור אותה בחליצה בלא איחור. נ. ע. כך קבלו כל הקהלות ע"פ החרם שנתנו בכל הקהלות ע"פ מורינו ר' דוד (עיין לעיל הנהה כ"ט).
4 נ. ימאן. ס. ואם הוא אינו רוצה יש לנדותו עד שיאמר רוצה אני.
5 מ. נ. ע. ינדוהו.
6 מ. נ. ע. לעשות..חכמים ל'.
7 מ. גזרנו בנישואין.
8 ר. ולא יעשו שום איסור רק הכל בהיתר.
9 מ. ולא.
10 מ. לזרוק.
11 ר. ובשאר המקומות שלא ברשות קהלו.
12 מ. כאשר תקן מאור הגולה.

26. וציונו[1] שלא ישחוט ולא יבדוק[2] אם [לא] ילך[3] לפני הבקי או לפני הרב ללומדו ובני הכפרים ילכו לחזור לפני הבקי.

צ	ר	מ
	27. ומי שאינו יכול לעסוק בתלמוד יעסוק בחצי דף כפי יכלתו או הלכה או מדרש או מקרא או הפרשה בכל יום אחד המרבה ואחד הממעיט ובלבד שלא יהא אנוס (ע' סוף מנחות).	וכל אדם יקבע זמן ללמוד אם[e] אין יכול בתלמוד יעסוק במקרא ובפרשה או במדרש לפי יכלתו אחד המרבה ואחד הממעיט רק שלא יהא אנוס ולא ישלחו בשר לבית כ"א ע"י יהודי ויסירו חוטי דכפלי[b] כאשר דברו רבותינו (חולין צ"ג א').
	28. וכל אדם ישליך ממנו איבה ותחרות ולא ילך בבית הכנסת כי אם בקורנא או במקטורן ולא בזוקניא.	ולא ידברו בבית הכנסת אך ישבו באימה וביראה ויעבדו את אביהם שבשמים הכל גזרנו בחרם (חמור).
		וגם גזרנו שהיבם אינו יכול לענן היבמה וכו' (עיין לעיל סי' כ' ובהג' שם)
		29. ובמקום שיש שם חרם של ב"ד וכו' (עיין לעיל תקנות רגמ"ה עמ' קי"ח).
וכל מי שיעבור מאילו תקנות יהא בנידוי כל הקהלות ואם ישב במרדו חדש ימים מותר למסור ממונו למלך וכל השומר תקנתינו יתברך מפי מלך הכבוד.		כל התקנות תקנו עפ"י החרם וחדשנו עתה בתתק"ף לפרט מה שתקנו קדמוני' מקדם לפני כמה פנים פה במנצא בחרם חמור לבד תקנות המאור הגדול רבינו גרשם מאור הגולה ב"ר יהודה שהן הרבה מאד והן ידועות ולא הוצרכו לחדשן.

1 מ. ר. ולא ישחוט.
2 מ. ר. שום אדם אם לא.
3 מ. ינסהו הרב.

צ	ר	מ
דוד ב"ר קלונימו'	דוד ב"ר קלונימוס	דוד ממנצפערק ב"ר קלונימוס
יוסף ב"ר עתניאל ראש הלבנון	יוסף ב"ר עזריאל[1]	יוסף ב"ר עתניאל ראש הלבנון
יעקב ב"ר אשר הלוי	יעקב ב"ר אשר	יעקב ב"ר אשר הלוי
אלעזר ב"ר יהודה הקטן	אלי'עזר הקטן בן הר"ר יהודה	אלעזר הקטן בן הרב ר' יהודה
אבי העזרי	אבי העזר	אבי העזרי
שמחה ב"ר שמואל	שמחה ב"ר שמואל	שמחה ב"ר שמואל ז"ל
אלעזר ב"ר שמואל	אלי'עזר ב"ר שמואל	אלעזר ב"ר שמואל
נתן ב"ר שמשון	נתן ב"ר שמעון	נתן ב"ר שמעון ז"ל
ברוך ב"ר שמואל		ברוך ב"ר שמואל
יואל ב"ר נתן הכהן	יואל ב"ר נתן הכהן	יואל ב"ר נתן הכהן
נתן ב"ר יצחק	נתן ב"ר יצחק	נתן ב"ר יצחק
חזקיה ב"ר ראובן	חזקיה ב"ר ראובן	חזקיה ב"ר ראובן מבוברט
יצחק ב"ר שלמה הכהן	יצחק ב"ר שלמה	יצחק ב"ר שלמה הכהן
מאיר ב"ר שמואל	מאיר ב"ר שמואל	מאיר ב"ר שמואל
מאיר ב"ר יואל הכהן	מאיר ב"ר יואל הכהן	מאיר ב"ר יואל הכהן
שמעון ב"ר אפרים	שמשון ב"ר אפרים	שמשון ב"ר אפרים
אלעזר ב"ר שמשון	אלעזר ב"ר שמעון	אלעזר ב"ר שמעון ז"ל
יוסף ב"ר יהודה		
יעקב בן רבנו יצחק הלוי	יעקב ב"ר יצחק הלוי	יעקב מחורנבך בן רבינו יצחק הלוי
סליק סליק	יצחק ב"ר משולם הלוי	יצחק ב"ר שמואל הלוי
	יהודה ב"ר שמעון	יהודה ב"ר שמעון
	מתתיהו ב"ר ראובן	מתתיהו ב"ר ראובן

ואחר[2] כך חדשנו תקנות אלו ע"פ החרם אף על פי שהיתה כבר תקנה ישנה שלא ינדה הרב שום אדם בלא רשות הקהל וגם הקהל לא ינדו אדם בלא רשות הרב ואם יעברו הרב או הקהל אין לחוש לנידויים ואם יסכימו שאר הרבנים לרב וינדו ולא יחושו על התקנה אין נדוים נדוי ותקנה זו מאבותינו הקדמוני' יצחק בר אברהם נ"ע, אבהרי"ח, דוד בן רבינו שאל'תיאל ז"ל, משלם בן רבינו דוד, יהודה בן רבינו משה הכהן, יוסף ב"ר משה הכהן חזן וכל קהל שפירא מענץ ווירמשא הסכימו וחתמו.

1 כן העתיק הרב הח' דר. רוזנטאל אבל ברשימת הספרים לידידי הח' דר. הירשפלד העתיק "ב"ר עתניאל".

2 התקנה הזאת נמצאה רק בנוסחא של שו"ת מהר"ם בר ברוך.

TRANSLATION

Z	R	M
1. When the leaders of the people gathered together it was decreed under oath with a scroll of the Torah[1] in hand and all entered the Covenant,	We, the undersigned have decreed with the scroll of the Torah in hand;	"The staff has sprouted"[4] .....
a. That no child of the covenant shall eat with his wife in the days of her purification,[2] until she	m. that no child of the Covenant shall dress after the manner of the Gentiles;[3] now wear sleeves;	and we have become associated and bound and we have decreed under pain of excommunication and curse and while the scroll of the Torah was being held that
	d. no one shall have long hair after the fashion of non-Jews;	b. No man shall lend

[1] In Rabbinic law one usually takes an oath by holding in one's hand either a scroll of the Torah or phylacteries. As the *herem* is a public oath it was announced in the same manner.

[2] There were some Rabbis who distinguished in regard to the days of the impurity of a woman after menstruation, between the actual period of menstruation and the seven days of purification thereafter. While the general opinion was that so long as the ritual bath had not been taken the status of the woman was unchanged, others thought that the seven days being added only Rabbinically, their impurity was less rigorous than that of the others. Rosenthal believes that our Takkanah tried to establish the authority of the German Rabbis in this regard as against the French Rabbis. Apparently he believes that the more lenient opinion was that of the French scholars. But in this he is not quite exact. For while it is true that those who held the less rigorous view were mainly French scholars yet their arguments are disposed of by no less a French authority than R. Tam, (See *Sabbath* 13b, *Tosafot* ad loc.). His view is identical with that taken by R. Eleazar in his *Rokeah* (Laws of *Niddah*). Compare also R. Eliezer b. Nathan *Niddah* (Raben 535) who seems to hold a more lenient view in regard to this matter than R. Tam.

[3] Extravagance in dress is a constantly recurring subject for Communal Ordinances as well as for enactments of Mediaeval Church councils. Gaudy clothes were peculiarly dangerous for Jews, because besides the expenses which they entailed, they aroused the jealousy of the Gentiles and gave them reason to believe that they were not oppressing the Jews sufficiently. (See Guedemann, II. Note XIV).

[4] Ezekiel 7.10.

Z	R	M
has bathed at the proper time; b. that no one shall lend money to his neighbor except with the understanding that both will share equally in the losses as well as in the profits,[1] in the manner described by our masters.	c. no one shall shave his beard either with a razor, or in such a manner as approximates the effect of a razor; a. nor may one eat with one's wife in the days of her purification until she bathes at the proper time;	another money except on the understanding that both will share equally in the losses as well as in the profits. e. No one shall put his wine in the vessels of Gentiles unless they are properly purified; No one shall permit a Gen-

[1] The arrangement mentioned here is known in the Talmud as the one of Sura. Two men entered a partnership, the one supplying the capital, the other supplying the work. The profits and losses were to be shared. The Mishna (*Baba Mezia* 5.4) prohibits the practice, unless the worker gets something more of the profits or something less of the losses than the owner of the capital. The principle is that in such a case half of the capital is a loan to the worker and a half a bailment with him. For the half of the capital the profits of which the worker gets, cannot but be considered a loan. The other half, the profits of which are to go to the owner, are entrusted to the worker to use for the benefit of the owner, and thus become a trust fund. If the worker gets only the same income as his partner, it will appear that he works for the trust fund in return for the kindness of the owner in lending him the money. That would be usury. Doubtless our Takkanah contemplates in speaking of an equal division of both profits and loss some advantage to the worker as is enjoined by the Talmud. This is what is meant "by permission according to the word of his masters". No layman would know how to draw up a legal contract in such a case.

The system was used extensively as a fiction to evade the Talmudic laws of usury in the Middle Ages. Thus if A wanted to lend money to B at interest, he would draw up a contract making half of the loan a trust which the borrower was to invest in the interest of the lender. That was permissible if the contract gave the borrower some advantage. There would then follow an additional agreement whereby the worker would agree to pay a stipulated amount instead of the chance gain. As there were no limits to the amount that might be stipulated, it was easy to make it cover a proper rate of interest. There were other even more common ways of evading the law. Some of them are referred to in RFL 56, HOS 202, *Or Zarua, Baba Kamma*, 202.

Z	R	M
c. that no one shall cut his hair in non-Jewish fashion,[1] or shave his beard either with a razor or in such a manner as approximates the effect of a razor;[2] d. nor shall one wear long hair.	b. nor may one lend money to his fellow except on the understanding that both will share in losses as well as in profits; e. nor shall one put his wine in a flask of Gentiles unless he has purified the flask properly;[3] f. nor shall he pertile to make his wine;	g. Nor shall one eat what is cooked by Gentiles; h. nor shall one act deceitfully, or clip the coins.

[1] To cut the hair after the fashion of the Greeks was prohibited in Rabbinic times. See *Baba Kamma* 83a, *Sotah* 49a, *Tosefta Sabbath* 7:1, *Sifra* Leviticus 18:3.

[2] Shaving the beard is Biblically prohibited, Leviticus 19.27. That was interpreted as applying only to shaving with a razor, but the Rabbis generally regarded shaving "as close as a razor" as permitted (*Shulhan Aruk Yoreh Deah*, 181.10 and comp. *Tosafot Shebuot* 2b). Is is primarily the latter practice, against which the Takkanah is in all probability directed. That shaving was not uncommon can be seen from the repeated emphasis on the prohibition of it in Jacob Ha-Levi's שו"ת מן השמים 36, 50, 69. It is told of Maharil that he would on festive occasions shave his beard. The manner is not described by his Boswell, but we may be certain that he did not use a razor.

[3] Rosenthal believes that here, too, the enactment of the Takkanah had as its purpose the establishing of the view of the German as against the French scholars. We learn from *Tosafot* (*Aboda Zara* 32b) that while it was generally held that the vessels which had been used by Gentiles were unfit for Jewish use as wine containers, the custom had become less rigorous. There were various attempts at justifying the use of gold and silver vessels and even earthen barrels or jugs after they had been used for impure wine, but no one looked upon these explanations as being more than attempted apologies for existing customs. It was but natural that even Rabbis who recognized the possibility of justifying the more lenient custom, should attempt to establish the severer law. In any case it cannot be said that the opinions were divided in this respect along national boundaries. The author of *Rokeah* takes as much cognizance of the lenient customs as do the French Tosafists themselves (See *Rokeah* 494).

Z	R	M
	mit a non-Jew to make his wine;[1]	
	g. nor shall one eat what is cooked by Gentiles;[2]	
	k. nor shall one deal in forbidden wine;[3]	
	h. nor shall one engage in fraudulent transactions or coin-clipping;[4]	
	1. nor shall one permit a Gentile to put water into the caldron on the Sabbath.[5]	

2. If[6] a man summon his fellow to court, the defendant may not delay for more than three days.

[1] That a Jew must not permit a Gentile to prepare his wine is taken as a matter of course in Tosafot (*Aboda Zara* 56b). The Tosafists argue that the question raised in the Talmud is whether the wine which is prepared by Gentiles may be sold. There could be no question of its being drunk.

[2] *Aboda Zara* 2.9. The fact that the writer uses the term of the Mishna shows that he has in mind that law, and that no additional stringency is intended.

[3] *Aboda Zara* 5.1.

[4] The charge of coin-clipping was one of the worst and most common charges made against the Mediaeval Jew. Little wonder then that he should seek to prevent the practice. Cf. unsigned responsum in RMR 246.

[5] This Takkanah occurs somewhat later in M and Z and is there also repeated in R, see paragraph 21.

[6] The provision that one is given three days to answer a complaint in Court is based on *Baba Kamma* 113a. It is stated there that one is not to be excommunicated as insubordinate unless he has thrice refused to obey a Court summons. As the Court in Talmudic times sat only on Monday and Thursdays, this meant that one was given a Monday, Thursday and the following Monday in which to respond

3. If a man threaten his neighbor in the presence of witnesses, saying "I will cause you loss of property," and if thereafter that Jew suffer loss, they shall compel the one who threatened to make restitution of the amount that the loser claims under oath; and if there are witnesses to testify regarding the amount that he lost,[1] the defamer shall make payment (without the oath). The defamer shall be considered unfit to testify,[2] or to take an oath; he shall be declared excommunicated in all the communities until he pays his fellow and also does penance[3] in Mayence, Worms and Speyer (M, and he shall receive judgment from the three communities of Mayence, Worms and Speyer; R. Speyer, Worms, Mayence). "One who is excommunicated in his own city, is to be considered excommunicated in all other cities."[4]

4. If books have been left with a man as a bailment, the

to a summons. Since in Mediaeval Jewry the Court sat every day, three days would take the place of the Talmudic three Court days. The three day period is referred to also in RFL, 29.

[1] As can be seen from the variants both R. and M, agree in reading here, "and if there are witnesses that he suffered loss." That is however an inadmissible reading since there could be no case unless there was some evidence that the threatened man had actually suffered loss. What is stated here is that if there are witnesses who can testify regarding the *amount* of the loss, the plaintiff need take no oath regarding the matter.

[2] This law is usually cited from the Book of Hefetz in the name of R. Paltoi Gaon (See Halper, *Sefer Hefetz*, p. 110). R. Joseph Colon insists that one cannot be declared unfit to testify unless one has actually given information regarding Jews to Gentile powers, but not for merely threatening to do so. (See Res. 126). That view is however in direct contradiction to the statement of R. Paltoi is generally quoted (*Or Zarua, Baba Kamma* 284 and *Sanhedrin* 23. Comp. also RMP 247, where the respondent does not quote the passage but decides that a threat to bring a Jewish litigation before Gentile courts brings punishment as well as the act itself). See Mueller, *Mafteah* p. 91, 61, and note. To his references should be added *Semag*, Positive Commandments 70, RMP 307, and the others just mentioned.

[3] See page 184, Note 1.

[4] *Moed Katan* 16a. The later compilations have changed the text so that it might include also villages, but Z is closest to that of the Talmud.

Community shall not have the authority to seize them for any tax owed by their owner.

5. If [1] a member of the Community states under oath that he has only such and such an amount of money and then it is found that he possessed more, and that he took a false oath, he shall be unfit to act as a witness or to take an oath; in cases of litigation where an oath is required, his opponent shall take the oath and receive payment.

6. a. No person shall free himself from taxes because he "rides in the Court of the King."

b. No one shall strike his neighbor.

[1] There is no doubt that one who commits perjury to save himself money is unfit for testimony according to Rabbinic law (*Sanhedrin* 27a). On the other hand there is the oft-quoted opinion that the one who takes a false oath in regard to taxes does not thereby become unfit. The Rabbinic principle seems to be that one whose sin consists in not having fulfilled an oath cannot be considered a perjurer. Perjury consists in taking an oath which is false at the time of the swearing. If one therefore promised under oath to pay his proper share of taxes, and failed to do so, he would not thereby become disqualified either to take other oaths or to act as witness. (see *Shebuot* 46b and *Tosafot* ad loc., *Asheri* ad loc. RMR 103, RMB 508, *Mordecai Sanhedrin* 3. 694). As a result of this law it became a prevalent notion that one could not be convicted of perjury because of false oaths in regard to taxes, even when the custom changed and each one has to state under oath the value of his possessions. If he gave a false amount, however, under oath he certainly was unfit according to law to testify in a Jewish Court. Hence there was need of the Takkanah before us to counteract false notions. The feeling that an oath in regard to taxes was somehow less important than another could not, however, be so easily eradicated. The later synods, perhaps seeing the troubles that would result from declaring a person unfit for testimony who was generally accepted, omitted the words "for testimony". For while disqualifying a person to take an oath put him to a financial disadvantage only in case of litigation, disqualifying him as a witness might result in endless ritual complications, should someone ignorantly accept him as a witness to a marriage or a writ of divorce.

Z	R	M
7. If[1] the King or the Bishop say to a Jew, "Give me such and such an amount or lend me money," or if he should seize property, the whole community shall share the loss, provided it was not indirectly caused by the person himself.[2]	If a person denounce his neighbor to the King or the Bishop or the ruler and cause damage to any Jew, the Jew being compelled either to make a gift or a loan to the powers then the community shall share and aid in the loss. But if the loss was caused indirectly through the victim's fault the Community shall be free and shall not share the loss with him.	

[1] In R the provision is limited to extortions caused by information given by another member of the Community. In M the provision is omitted. While the members of the Community were quite willing to share in such gain as accrued to any individual through his friendship to the King or Bishop, they were not so desirous of partaking of the suffering that befell one. Yet it would seem that this provision would be a corollary of the following.

[2] This provision while given here as a Takkanah is upheld as good Rabbinic law by several authorities (RMC 222, RMP 708). R. Simhah b. Samuel of Speyer relates that his uncle, R. Kalonymos, being on very intimate terms with the bishop or ruler of his community often was granted a release from his share of the taxes. He would always share that benefit with the community, paying his proper share in spite of the special privilege granted him. R. Simhah adds that while for a time he considered this to be a result of his uncle's extraordinary piety, he later came to the conclusion that it was good Jewish law. For all the members of a community are regarded in law as partners so far as the taxes are concerned. The Talmudic law provides thay any gain accruing to any member of a partnership must

8. The young men[1] may not take from the bridegroom more than six of the small coins of the Kingdom; and the young men who are with the bridegroom shall not be permitted to take anything from the people

R	M
and all shall be at peace with one another.	neither a chicken or anything else.[2]

9. If[3] an individual has a complaint against the community because of taxes or for some other reason he shall pay the Community what they ask him, but the Community must respond to him in Court although they have no personal interest in the matter.[4] The individual is to be considered

be shared by all. (RMP 932, *Or Zarua Baba Kamma* 460, Cf. also RMR p. 206, and Isserlein, *Pesakim u-ketabim*, 144).

[1] Just what the function of tne young men here mentioned was, is not made clear. Most likely they are the people referred to by R. Samson b. Abraham of Sens as going to meet the bridegroom (*Tosofot Succah* 45a, *Asheri* ad loc., *Mordecai Succah* 2, 743). R. Samson tells us that it was customary for the young men to meet in combat; they would charge eacn other on horseback, and while apparently it was quite unusual for the riders to receive any hurt, the horses would suffer and the riders' clothes would often be torn. R. Samson frees the one causing the damage from any responsibility since both entered the game knowing the risk involved. The custom mentioned by R. Asher b. Yehiel (Res. 101, 5) is not identical with this. There the young men escort the bridegroom, and it was only by accident that the mule on which one was riding was hurt.

[2] Stealing in play is not unknown in Jewish literature. In *Terumat Ha-Deshen* (110) it is stated in the name of Riba (R. Isaac b. Asher) that one cannot be called to account for stealing food in jest on Purim. The same responsum is quoted by R. Moses Mintz (Res. 18). See above, p. 126.

[3] This section is practically identical with TRG, 7.

[4] There is a distinct difference here between R and M on the one hand and Z on the other in regard to this provision. In R and M it is provided that the Community need not answer a complainant in any other courts than its own. In order to insure impartiality,

as if he were in possession of his own.[1] They must follow the decision of the Court according to the law. If anyone transgresses he all be fined or flogged.

10. An anathema should be declared against the informers on every Sabbath.[2]

11. Whoever has a *Hazzan* or one to "roll the Torah", or any public officer appointed through Gentile influence, is excommunicated and also the *hazzan* and the one "who rolls the Torah," as well as he who endeavors to bring it about that a Gentile should judge a Jew is to be in excommunication, for one should try one's litigation through Jewish judges.[3]

however, the judges must first waive any benefit that may accrue to them from the decision. In Z it is required that the representatives of the Community appear before "those who are not connected with the case" that is the judges of some other community.

[1] The citizen must pay all that the community demands from him before he can compel them to respond in Court. The Takkanah provides that he should not by this act lose the advantage of being the defendant rather than the plaintiff. This is not, however, the accepted view. R. Meir b. Baruch says, (RMP 106), "Wherever an individual has an unproven claim or a doubtful case against the community, we say the secular law of the land is dominant. The taxes of each person are to be considered as lying in the treasure-house of the King. It is but reasonable that this should be so. Otherwise every member of the community might claim, 'I am legally free for I have paid my taxes'. He could then say, 'I will state under oath that I paid, or you state under oath that I did not'. (Such is the Rabbinic law in cases where no proof is available). Now rather than that every person should take an oath over the small amount that would fall to his share, they would each waive their right and the individual would free himself from taxes." It was therefore decided that the Community has the benefit of the doubt if the individual brings no proof of his having paid or being free from payment.

[2] R inserts here a provision which corresponds in part to what is found at the end of Z, namely, that he who remains under the ban of excommunication for a month forfeits the protection that Jewish law offers him against defamation; and his property may therefore be denounced to the ruling powers. This doctrine was vigorously opposed by R. Joseph Colon in later times (Res. 127) although he defended the right of the Community to use physical force, even that of the government in the collection of taxes.

[3] Compare Takkanah of R. Tam, chapter IV, Text A. And see *Sefer Hasidim* (ed. Bologna) section 764.

Z	R	M
12. It is not permitted to play with a Gentile[1] or with a Jew for money		
or for food and drink[2] nor may one give money instead of food.[3]	but one may play for food or drink on half-holidays (festival week) or at a wedding, but one is then not permitted to exchange the food for money.	
13. The *Parnes*[4] may not in secret excommunicate any person or release an excommunication without the consent		

[1] Since according to some authorities the property-rights of Gentiles are not as clearly defined in Jewish law as those of Jews, it might have been supposed that one would be permitted to play games of chance with Gentiles. It was therefore necessary to declare that the property of Gentiles was just as sacred as that of Jews. (See Res. *Binyamin Zeeb*, 281).

[2] Gambling for food stuff or drink was held not to be so serious an offense as gambling for money. Since people were not usually niggardly about their food, there could not be so strong a prohibition against using the money of others for food as there was in ordinary gambling. Compare *Mishna Sabbath* 22.2. See also the will of R. Solomon of St. Goar, published in *Kobez Debarim Nehmadim* (Husiatyn).

[3] Gambling was the subject of numberless Takkanot in the Middle Ages. Cf. Res. R. Isaac b. Sheshet 249, R. Elijah Mizrachi 13, R. Israel Bruna 136, and many others.

[4] The abuse of the *herem* was so tempting that something had to be done to restrain the Rabbis and leaders of the communities. The words "in secret" are not to be taken too literally. The great power of the *herem* lay in its public character and the social ostracism it involved. What is meant is that the *herem* is not to be pronounced at a secret meeting. Such Takkanot were not rare. R. Israel Bruna tells us that the ordinance existed in his time (Res. 188), and we have a responsum of R. Solomon Ibn Adret, where he denies the power of a community to limit the power of the Rabbi in that manner. (Comment of R. Moses Isserles, *Yoreh Deah*, 334.18). One of the charges against R. Benjamin b. Mattathias was that in violation of a Takkanah similar to this, he excommunicated people without the consent of the community (*Binyamin Zeeb* 249).

of the community, nor may the Rabbi do so. Only the Public Assembly shall declare or release excommunication.

Z	R	M
14. a. No[1] person shall close a synagogue unless he has "seated the community" twice or thrice and the Community shall hear his complaints and do him justice.		
b. No one may interrupt prayers at the afternoon or morning services, or on the Sabbaths or when the *Hallel*[2] is recited.	Nor may one interrupt the prayers otherwise than at the *Seder Kedushah*.[3]	
15. No Jew shall through recourse to Gentiles free himself of his communal obligations.		
		All this have we decreed under the *herem*.
16. Nor shall anyone reveal any secrets to Gentiles.		
17. No man or woman shall prepare any feast except in fulfilment of a religious obligation.[4] But if		

[1] See Takkanot of R. Gershom (page 119, paragraph 2). In a manuscript of *Sefer Minhagim* of the Library of the Jewish Theological Seminary, to which reference has already been made, (above p. 128), fol. 63a, the following statement is found:

ומיהו יתום ויתומה ואלמנה יכולי' לסגור אפילו בפעם ראשון עד שיעשו להם דין

"An orphan, whether male or female, and a widow, may close the synagogue even in making their first complaint, until justice is done them."

[2] By the *Seder Kedushah* is meant the prayer ובא לציון where the *Kedushah* is recited with its Aramaic translation.

[3] The *Hallel* is recited on Hanukkah, the New Moons and the three festivals, Passover, *Shebuot* and *Succot*.

[4] See *Pesahim* 50a and comp. Alfasi and *Mordecai* ad loc. Limitations on expenditures for banquets were common in the Takkanot of the Middle Ages, see Part I, p. 88, and also Guedemann, I.160, and J.J.G.L. 1920, p. 79.

Z R M

one has had his blood let[1] or if one has guests he may ask his friends to come and dine with him. Similarly women may dine with one that has given birth. On a festival, too, it is permitted.

No man shall make complaint at the synagogue on a day when the *Hallel* is recited, but the prayers may be interrupted for the public needs.

18. No private individual may recite the prayers on Rosh Ha-Shanah or Yom Kippur without having obtained the consent of the Community.[2] But the *Hazzan* may recite the prayers of the first day of Rosh Ha-Shanah, and Evening

[1] That the day on which one was bled was celebrated as a festive day, or at least was the occasion of a dinner to one's friends, can be seen also in RMP 605 and elsewhere.

[2] The office of the *Hazzan* was generally held during good behavior. Moreover in many communities it was hereditary. While it was not always a salaried position, it seems to have become very often an office with many applications and candidates (RMR 109, 110, 112). Very often a Community or an influential part of it would like to remove a *hazzan* either because his voice had ceased to be pleasing or because of personal animosity. The rule laid down here was that if a *hazzan* had not been formally removed—and that could only be done for cause—he might insist on his right to read the prayers during the times when a *hazzan* performed such duties, that is on the first day of Rosh Ha-Shanah, and on Yom Kippur evening, and Yom Kippur morning prayers till the *Musaf* service. That a *hazzan* was expected to recite the prayers only on the first day of Rosh ha-Shanah can be seen from the instances of R. Jacob Molin (*Maharil*, Laws of Rosh Ha-Shanah, note) and R. Israel Isserlein (*Leket Yosher* p. 129). Maharil recited all the prayers of Yom Kippur, but that was probably voluntary on his part, and in accordance with the desires of the Congregation (*Maharil, Yom Kippur*).

Prayers of Yom Kippur as well as the Morning Prayers till the *Musaf* Service. But on the second day of Rosh Ha-Shanah and Yom Kippur after the *Musaf* Service, it is left to the community to assign the prayer. If the *Hazzan* is weak so that he cannot pray the people shall appoint someone to take his place.

19. Let[1] it not occur to any man to command the judges of Israel not to sit in judgement or to open a trial. All of these things did we enjoin under the *herem*.

20. We[2] also have ordered all to observe our Takkanah

[1] Compare Takkanot of R. Tam, above p. 153.

[2] As is well known Biblical law provides that if a man dies without issue, his brother is to marry his wife. It is assumed in the Talmud on the basis of the story in the book of Ruth, that with the marriage of his sister-in-law (*Yibbum*) the brother-in-law also acquired special rights in the property of his deceased brother. If the brother-in-law refused to accept the widow as his wife, she had recourse to the ceremony of *Halizah*, which freed her to marry anyone she preferred. In the case of *Halizah*, the widow was of course given her dower-rights from the estate of her former husband.

Rapacious brothers-in-law, however, often sought to obtain from the poor widow part of her *Ketubah* in return for the freedom to marry again which was given her through the *Halizah*. As Jewish police power disappeared, there was no way in which the brother-in-law could be compelled to allow the *Halizah* to be performed. The only inducement that could be offered in most cases was money. The Takkanah before us seeks to remedy this defect by defining to some extent the respective rights of the brother-in-law and of the widow. The matter underwent further development in the Takkanah printed below as Text B.

This part of the ordinance seems to be the oldest. We find it not only in the texts of these Takkanot but it was quoted in a responsum by R. Meir b. Baruch and through him in the responsa of R. Moses Mintz and by R. Solomon Luria (*Yam Shel Shelomo, Yebamot* 4.18), as stated in the introductory note to these Takkanot. In these extracts and also in R. it is declared to be the work of a synod assembled in the year '56 by R. David of Muenzberg. There can be hardly a doubt that he called the synod to consider the conditions that were prevailing after the Third Crusade in 1195. Many Jews lost their lives at the time and most of the survivors were impoverished. At such a time it was vitally necessary to take some action in regard to the matter of *Halizah* and the power of the brother-in-law over the widow. That the '56 means 4956 (1196) and not 5056 (1296) is evident from the fact that R. David

that the brother-in-law (in case of a *Halizah*) should not keep his sister-in-law in suspense. From her own estate nothing must be deducted. The estates which came to her through her husband (both lands and books[1] which are family heirlooms) shall be divided between them, so that the heritage may not go to some other family.[2] If it is the husband's acquired, rather than his inherited, estate,[3] the judges shall divide it according to what appears just before their Creator. The movable property should be divided in the "gate of the city" between the brother-in-law and the widow, according to the understanding of the scholars and the heirs shall not deviate from their decision either to the right or to the left. One must not take from the widow any of the property which she brought into the marriage. The brother-in-law must free the widow without any delay and *leavening of the Mitzvah*. If the widow was only *Arusah*[4] the brother-in-law must have the *Halizah* performed after three months[5] (excluding the day of the husband's death), without delay, and he has no right to demand anything. The widow must take an oath as to the value of the property which she has in hand and the judges shall arrange between the brother-

of Muenzberg is mentioned in connection with it. He died in the early part of the thirteenth century. It would be quite natural for people writing in 4983 (when R. was admittedly written) to refer to a date less than thirty years previous without mentioning the century.

[1] In the Middle Ages books were considered in the same class as real estate in many respects. They were treated as a distinct class of property in regard to taxation (Res. R. Meir b. Baruch, ed. Prague, 767, Res. R. Hayyim *or Zorua* 2, and *Terumat Ha-Deshen*, 342), and are often mentioned on an equality with landed estates.

[2] Compare Numbers 36.9.

[3] Compare Leviticus 27.22.

[4] One who had received *Kiddushin* (i. e. a ring or some other gift, by which she became *sanctified* to her bridegroom) but with whom the *Nissuin* has not been performed.

[5] The law requiring that the *Halizah* take place no less than three months after the death of the husband is Talmudic (*Yebamot* 4.5). It is part of the general rule that a widow or divorcee may not marry within three months after the death of the husband or the divorce.

in-law and the widow. As for the widow who was fully married the *Halizah* must be performed without delay, and the widow must go to the domicile of the brother-in-law to be released if he is in a different city. If the brother-in-law refuses to release her he is to be flogged (*Other texts*, excommunicated) until he promises to do what the Sages ordain.

21. We have furthermore decreed that at each wedding they shall appoint a Jewish guardian to prevent pouring of water into the caldron from which they are to eat on the Sabbath.

22. No one shall be permitted to cast a writ of divorce to his wife without the consent of three communities. If he does divorce her without such consent, the husband and the witnesses shall be excommunicated.[1]

23. No one shall call his neighbor "bastard" or revile him with any other blemish of birth. All this have we decreed under the *herem*.[2]

24. We have also agreed and ordered that each man shall bring his tithes or other gifts to charity in accordance with the decree of the community.[3]

25. In a locality where the amount given for the instruction of the young is insufficient, they may take part of what people have left for the "memory of their souls",[4] and give it to teachers, unless the person on his sick bed stated

In a locality where the amount given for the instruction of the young is insufficient (because the fund left for the purpose is too small, because they have little) they may take from other funds left by deceased persons and pay the teachers

[1] See part I, 23ff and notes.

[2] See above p. 179, Text A. note 2.

[3] See p. 185, note 18.

[4] It seems to have been customary for people to leave sums on their deathbed for charitable purposes, and as a reward their would be prayed for on the final days of the festivals and on Yom Kippur.

the purpose for which his money was to be used. The remainder they may use for such purpose as the Community desires.

unless the person on his sickbed stated the purpose for which the money was to be used; the remainder may be used for such purposes as the Community desires.

26. We have ordered that no one shall act as *Shohet* or *Bodek* unless he presents himself to the expert or the Rabbi for trial; and the villagers may go (for reviewing their studies?) to the expert.

27. One who is unable to devote himself to the study of Talmud, should study half a page if possible or Midrash or Scripture or part of the weekly portion every day, (He who can do much and he who can only do little are alike).[1] They should study daily unless they are prevented by an emergency.[2]

Every man shall set aside a definite time for study; if he is unable to study Talmud, he shall read Scripture, the weekly portion, or the Midrash according to his ability, he who does much and he who does little are alike, provided that he is not prevented by an emergency. No one may send meat home except through a Jew. The forbidden fat on the loins of the animal

[1] See *Mishna Menahot*, end.

[2] It is evident that the quotation from the *Mishna* is an insertion for as it stands it separates the final clause from its connection, leaving it without meaning. What the paragraph originally stated was doubtless, that the person should set the time to study daily provided no preventing emergency would arise.

shall be removed in accordance with the Talmudic law.[1]

28. Every man shall cast aside enmity and rivalry. And no one shall go to the Synagogue otherwise than with a cloak or overcoat but one should not wear a *suckenis*.[2] It is not permitted to speak in the Synagogue, but they shall sit with reverence and awe and serve their Father who is in Heaven. All this have we commanded with a severe *herem*.

Whoever transgresses any of these Takkanot shall be under the excommunication of all the Communities, and if he remains in his obduracy for a month his property may be denounced to the King.[3] Whoever keeps our Takkanot shall be blessed by the King of Glory.

All these Takkanot were made by the *herem*. We have renewed now in the year 4980, what our ancestors ordained previously may years ago, here at Mayence by a severe *herem*; except for the ordinances of the Great Light, R. Gershom, the Light of the Dispersion, b. R. Judah, which are very many, and are well-known, and did not need renewal.

David[4] b. Kalonymos

[1] See *Hullin* 93a.

[2] See Guedemann, I. 261.

[3] See above note 26.

[4] What is known of the individuals mentioned as signers of the Takkanah has been gathered by Rosenthal in his notes to the edition of R in the *Monatsschrift*, vol. 45. Special reference may be made to

Joseph b. Othniel.
Jacob b. Asher.
Eliezer ha-qatan b. R. Judah
Abi Ha-Ezri (Eliezer b. Joel Ha-Levi)
Simhah b. Samuel
Eliezer b. Samuel
Nathan b. Samson
Baruch b. Samuel (Not in R)
Joel b. Nathan Ha-Kohen
Nathan b. Isaac.
Hezekiah b. Reuben
Mattathias b. Reuben (Not in Z)
Isaac b. Solomon (Ha-Kohen)
Meir b. Samuel
Meir b. Joel Ha-Kohen
Simeon (M. R. Samson) b. Ephraim
Eleazar b. Samson (M. R. Simeon)
Joseph b. Judah (Not in M or R)
Jacob b. Isaac Ha-Levi
Isaac b. Meshullam (M. b. Samuel) Ha-Levi (not in Z)
Judah b. Simeon (Not in Z)

his suggestion that the R. David b. Kalonymos who is here mentioned as one of the signers, is not to be identified with the R. David of Muenzberg.

(Found only in M) Afterward[1] we renewed these Takkanot under the *herem* even though it was an ancient ordinance: That the Rabbi shall not excommunicate any one without the permission of the Community, nor shall the Community excommunicate anyone without the sanction of the Rabbi. If the Rabbi or the Community transgress this ordinance their excommunication need not be heeded. Even if the other Rabbis should agree with the local Rabbi and add their excommunication, it is not to be heeded. This ordinance has come to us from our ancestors. Isaac b. Abraham, AB.[2] b. IH., David b. Shealtiel[3] Meshullam b. David,[4] Judah b. Moses Ha-Kohen,[5] Joseph b. Moses Hazzan and all the community to Speyer, Worms and Mayence agreed and signed.

TEXT B

TAKKANOT OF THE RHINE COMMUNITIES 1381

In establishing the text of the following Takkanot, there were available five sources, 1. The *Yam shel Shelomo* (Hebrew ס) by R. Solomon Luria, where the Takkanot are quoted in an abbreviated form (See *Yebamot*, 4.18). 2. The responsa of R. Moses Mintz (Heb. ע), where they are quoted at somewhat greater length (see res. 10). The following Bodleian Manuscripts: 3. Hunt 221, Neubauer 820 (Heb. נ). 4. Mich. 392, Neubauer 693 (Heb. ק) and; 5. Seld. A.5 Neubauer 864 (Heb. ר). They differ

[1] For the date of this synod see preface to these Takkanot, and also Part I pp. 63–65.

[2] Bruell *Jahrbuecher* 7, 89, Note, and A. Freiman, *Ascher b. Yehiel*, 1918, p. 7, note 8.

[3] See *Or Ha-Hayyim* p. 347, Gross in *Monatschrift*, 1871, p. 263, and Kohn, *Mordecai b. Hillel*, p. 107.

[4] See J. E. VIII, 502, Epstein in *Monatschrift*, 41.468, and Kohn, *Mordecai b. Hillel*, p. 141. He was the son of the famous R. David b. Kalonymos of Muenzberg. Together with R. David b. Shealtiel he corresponded with R. Isaac Or Zarua (See HOS 103, 221, 747).

[5] See Kohn, *Mordecai b. Hillel*, p. 130. He was a relative and a teacher of R. Meir b. Baruch. Took part in case together with R. Meshullam b. David and R. David b. Shealtiel (HOS 221).

very slightly from one another. The only difference of real importance, as can be seen from the list of variants, is in the matter of the date. Hunt. 221 gives the date as 5146 rather than 5141 which is that of the other sources. Moreover while all the other sources mention that the synod took place on Monday, the fifteenth of Ab, this text omits the mention of the day of the week. This omission was necessitated by reason of the fact that in 5146, the fifttenth of Ab did not fall on a Monday. It did fall on that day in 5141. In view of the fact that the date is given so exactly in most of the sources, I believe that we may safely assume 5141 to be the correct date.

TEXT

תקנת קהלות שום שנתחדשה שנת קמ"א לפרט. יען אשר ראינו כי כמה[1] מחלוקות באות מפרעון הכתובות זה אומר כה וזה אומר כה ואין הסכמה שלימה יש על זה ותקנ' רבותינו עמודי עולם נשתכחת וזה אומר להפך מזה וגם על דבר החליצה ראינו שכמה נשים יושבות עגונות מחמת יבמין התובעין מהם ממון[2] אשר לא כדת ועוברים על מצות חליצה והוא מצות עשה וחלצה נעלו (דברים כ"ה. ט.) ואלו דלא תגזול דעל ידי גנישתם כופין את יבמתם ומאהביה' שהם צריכי' ליתן ממון שאנם חייבים והתורה אמרה וחלצה בתנם ואמרינן[3] במצות עשה מכין אותו עד[4] שיאמר רוצה אני או עד שתצא נפשו (כתובות פ"ו. א.) וכ"ש היכא דמצות עשה דייבום עדיף כמו שאמרו רבותי' וגם דלשבת יצרה (ישעיה מ"ה. ח.) גם כמה קלקולים באים מזה כאשר שמענו וראינו ורבותינו הקדומים ע"ה שהיה דורם[5] צדיקים וישרים עשו תקנה לזה וכל שכן יש[6] צריכות תקנה יתירה וגדר לעשות בדור הזה ליישר העקוב לבלתי רבות מחלוקת לבאר ולפרש היטב לכל אורח שישמור האגרת הזאת לבלתי יוסיף ויגרע מאת הסכמתינו ולא לסתור תקנ' הקדמוני' אלא לפרש להמון עם על כל דבר הסר והסכום לבלתי יחפש שום אדם אחד יאמר אלך לפני רב זה והאחד[7] יאמר אלך לפני רב אחר ולא יסכימו יחד כמו שעשו גדולי עולם שהיה כוונתם לש"ש והיו דבריהם כיתד שלא תמוט והיו דבריהם נשמעים והיו צייתי' למאמרם ולכן ישבנו בקהל עם ובמושב רבנים ופרנסים והסכמנו בפה אחד וחלינו פני רבותינו להסכים ולחתום עמנו כדי שיתחזק תקנותינו וזאת אשר הסכמנו:

1 נ. כי כמה.
2 ע. ממון והון.
3 ע. ואף.
4 נ. עד.....אני ל'.
5 נ. שהיו רובם.
6 נ. יש צריכה תורה בעצות. ע. יש המחלוקות וצריכות יתירה גדר לעשות.
7 נ. ע. והאחר.....אחר ל'.

הנה בעד הכתובה מקדם היה הפרעון פה ממטבע קולנישׁ1 באותו פעם הלך אותו מטבע ועתה כלה ועבר אותו מטבע והסכמנו שהבתולה תגבה ו' מאות זהו' ממטבע פלורין והאלמנה ג' מאות ממטבע פלורין לא פחות ולא יותר אא"כ שכתב לה או שמחלה.

ועל דבר החליצה אשר נחרצה ונמלצה חוצה ראינו תקנת גדולים2 הקדמונים עמודי עולם ואנו מסכימים על דבריהם ולכל עונשים אשר כתבו נדוי חרם אלה ושמתא שאין היבם רשאי לענן היבמה יותר מג' חדשים כדברי חכמים אחר מות הבעל והיכא דאיכא נכסים שהכניסו שניהם בין שהוסיפו בין שהוגרעו או שאחד מן הזוג לא הכניס דבר יחלוקו כל הנכסים שהניח המת שוה בשוה יורשי המת והיבמה אפי' לא יגיע חצי חלק היבמה לפרעון כתובתה אבל אם הנכסים מרובים ויגיע חצי חלק היבמה לפרעון כתובתה או יותר אז יש ברירה ליורשי המת והיבם אם יפרעו ליבמה הכתוב' במזומני' או יתנו לה חצי הנכסי' שהניח3 כמו שהם ולא יהא יותר ביניהם לא פקפוק ולא נדנוד אלא כמבואר יעשה כאש' גזרנו ולפוטר' בלא דחייה4 וגם נכסי' מלוג שירשה מאביה או מאמה או מאחד מקרוביה לא ינכו אלא זה יתנו לה בראש וכן5 מה שירש הוא יתנו ליורשיו בראש. והיבמה תלך אחר היבם במקום שהוא6 שם ואם הוא הולך אחריה עליה לפרוע מה שהוציא היבם על זה ואם יסרב היבם לבלתי לחלוץ ויתן עיניו בממון שאינו שלו או יברח כדי להשמט מן החליצה ילכד בחרם של כל הקהלות עד שיתרצה לחלוץ ויהי' בעונשינו ובעונש רבותינו הקדומים וינדוהו הרבנים פה והפרנסים כך הסכמנו ביום ב'7 ט"ו באב שנת קמ"א8 לפרט קהל מגנצא.

משה ב"ר יקותיאל הלוי מולין
שלמה בן מו' הק' הר"ר יעקב זצוק"ל
אברהם בן בהח"ר גמליאל בן פדהצור
שמואל בונפנט
העלו' נתן ב"ר חיים נב"ח
גם בהסכמתי נעשה זאת
יצחק ב"ר אליקים לושי
נאם מנלין רוטנבורק
יחיאל ב"ר יצחק הכהן ינב"ע
גם הייתי בוועד הזה ח"ש (ה"ש) מאיר בהק"ר שמואל הכהן היתום מנורטהויזן.

There seems to be no need of translating the introduction which describes the confusion into which matters had

1 נ. קולנ"ת.
2 ק. גדולי ס. נאוני.
3 ק. המת שוה בשוה יורשי המת והיבם.
4 ע. ק. דמים.
5 ק. וכל.
6 נ. ס. ר. שהוא ועליה לפרוע.
7 ע. ל'.
8 ע. ק. קמ"ו.

fallen because of the unfortunate lack of agreement among the Rabbi as to the rightful amount due the *Yabam*. The body of the Takkanah is as follows:

"Therefore have we, sitting in assembly, in the council of Rabbis and Presidents of Communities, unanimously agreed on the following ordinances. We also beg our masters to agree to these ordinances and to sign them so that they may be the more firmly established. This is what we have ordained.:

1. The [1] payment for the *Ketubah* in times past has been made in the coins of Cologne. At the time the custom was established these coins were current, but now they have completely disappeared. We have therefore agreed that the *Ketubah* of a virgin shall be six hundred (600) gold florins, and that of a widow, three hundred gold florins, neither less nor more, unless the husband has agreed to increase the dower, or the wife waived part of her rights.

2. Regarding the matter of the *Halizah*, [2] we have ex-

[1] The disappearance of the Cologne coins as a standard currency brought confusion into the whole matter of payments demanded by Jewish law. A generation after the passing of this ordinance, R. Jacob Molin, the son of one of the signers, tells us that 200 florins were paid in Cologne, while it was usual to pay 600 in Mayence. In other words, Cologne had not adopted this Takkanah. It seems strange that *Maharil*, (as R. Jacob is usually known), makes no mention of this synod in defending the custom of his community. He rather quotes Talmudic precedents for permitting the people of a locality to set their *Ketubah* at an amount beyond that which is usual. This is especially justifiable, he claims, where the people of a district are of better stock, and he claims that the people of the upper Rhine are of better families than those of the lower Rhine country. (*Minhage Maharil*, Laws of Marriage). R. Jacob Weil, a disciple of Maharil, informs us that in his time, the practically universal custom in the Rhine cities was the payment of 600 florins (Res. 14). We see then that the ordinance was gradually accepted.

[2] See the Takkanah in regard to the *Halizah* which is included in the text of the Takkanot of the Rhine Communities of the thirteenth century (above, p. 229). That ordinance permitted the individual rabbi or judge to decide in each case what share of the property was

amined the Takkanot of our masters, the great men of former times and we agree to all they say and to the punishments which they have set for disobedience: *Niddui*, *Herem*, curse, and excommunication. The *Yabam* (the brother of the deceased husband) shall not keep the widow in suspense for more than the three months which is required by the law; and whether there are estates which the husband and wife severally brought into the marriage and which increased or decreased in value, or one of the couple brought nothing, all the family property shall be divided equally between the heirs of the deceased and the widow, even if the portion of the widow is less than the amount due to her as her *Ketubah*. If, however, the estates are large and the half that is to be given to the widow is equal to or is more than the amount of the *Ketubah*, the heirs of the deceased and the *Yabam* have the option either to pay the widow the amount of her *Ketubah* in cash, or to give her one half of the estates which were left. There shall be no further disagreement or difference between them but all must be done in the manner described in accordance with this decree. The widow shall be freed without further delay. In regard to the property which she inherited from her father or mother or another relative, they may not take it from her, but they must give it to her completely. Similarly, whatever he inherited must be given to his heirs completely. The widow must go to the place of her brother-in-law and if he comes to her city she must pay his expenses. If the brother-in-law objects and refuses to have the *Halizah* performed in his desire for money which is not his, or if he flees in order to avoid the *Halizah*, he shall be "taken in the net of the excommunication" of the Communities until the *Halizah* is performed. Thus did we decide on Monday, the fifteenth of Ab, of the year 5141.

to be given to the brother of the deceased and what to the widow. As the introduction to the Takkanah states, this uncertainty led to many abuses, since it naturally soon became known that one rabbi generally favored the brothers and another the widows. The Takkanah before us by definitely fixing the method of division is a distinct advance on the earlier one.

Moses b. Yekutiel Molin [1]
Abraham b. Gamaliel b. Pdahzur
Nathan b. Hayyim
Isaac b. Eliakim
Yehiel b. Isaac Ha-Kohen
Solomon b. Jacob
Samuel Bonfant
This was enacted with my consent, Menlin of Rothenburg.
I, too, was present at this council, Meir b. Samuel Ha-Kohen of Nordhausen."

[1] So far as these men are known they are described in part I, p. 74, and notes.

CHAPTER VIII

SYNOD OF FRANKFORT, 1603

The text of the Takkanot which were passed at the synod that was held in Frankfort, in the year 1603,[1] was for a long time considered lost. One of the translations that were prepared in defense of the Jews against the accusation of high treason has been printed by Stern in Koenigsberger's *Monatsblaettern* 1890–1. The Hebrew original was found and published by Dr. M. Horovitz of Frankfort in a separate pamphlet in 1897.

The following is a free translation, in the nature of an abstract of the Takkanot, but it preserves the essential features of each section.

The heads of the Communities have gathered here at Frankfort at the order of our masters, the Sages of Germany, to sit in council and look into the needs of the community and to make such ordinances and decrees as appear to be needed by the time and the place, so that the Holy People may not be a sheep without a shepherd;

Section 1

Regarding law and judgement.[2] It is common offense among the people of our generation to refuse to obey Jewish law and even to compel opposing litigants to present themselves before secular courts. The result is that the Holy Name is profaned and that the Government and the judges are provoked at us. We have therefore decided that anyone who sues his neighbor in secular courts shall be compelled to free him from all the charges made against him, even though the Courts decided in favor of the plaintiff. A person guilty of taking a case to Gentile courts shall

[1] See part I, page 79.

[2] See Takkanan of R. Tam, above Chapter IV.

be separated from the community of Israel, shall not be called to the Torah, and shall not be permitted to marry until he repents and frees his fellow from the power of the Gentile courts. If the defendant was compelled to undertake expenditures in order to bring the infraction of this ordinance before the Jewish courts, the offender shall be compelled to bear the expense.

It is well-known that many persons have by the power of their wealth sought to break down the organization of Jewish life in Germany, and have all but destroyed it completely. It is hoped that at some future time they will be brought to justice. However, anyone who will henceforth act in violation of the above ordinance shall be considered an informer and he ostracized as described above. We have ordained and established a special prayer concerning this rule to be publicly recited in every Jewish community every Sabbath throughout Germany.

If the transgressor of this ordinance be a scholar, he is guilty of profanation of the name, and shall therefore lose his right to be called *Rabbi*; anyone who gives him the title shall be punished. If he be a leader of head of a community or an acting Rabbi or Teacher, he shall be removed from office.

Since we know that we have in our communities wicked men of much influence who cannot be dealt with by the local courts, we have established five central courts in the following cities;—Frankfort, Worms, Fulda, Friedburg, and Ginzburg. If any local court finds itself powerless to deal with any person it shall refer the matter to the district court. The judge of this court shall do all in his power to bring the offending person to terms.

Section 2

It has been agreed that each settlement shall make the assessment for the purposes of taxation in the following manner.[1] Each community shall choose assessors of un-

[1] Compare Italian Takkanot, below, chapter X, and Takkanot of Castile, below, chapter XIII.

questioned honesty and piety, who will assess every man and women according to their possessions. The assessors shall take an oath to act without consideration of friendship or enmity, and to be fair to each person. After making the assessment they shall divide it in half, and each person shall pay a "Shekel" pro rata on the remainder.

Such persons as live far away from Jewish communities shall be obliged to present themselves before the community with which they are generally associated and they shall there be assessed in the manner just described.

The assessors shall keep the assessments of the individuals in confidence so far as possible.

The Rabbis of Germany have agreed to collect each month beginning with the month of Tishri, 365 (1605) a tax of one percent of all the property.

The following cities were appointed centers to which collected moneys were to be sent: Frankfort, Worms, Mayence, Bing, Hamm, Friedburg, Schneitach, Wallerstein, and Ginzburg.

The assembled delegates shall then choose representative men to present the Jewish affairs before the Court of the King.

The collected moneys shall be put in a treasury a key to which shall be in the possession of each of the delegates. But no one shall remove anything without the knowledge and consent of his colleagues.

If any persons refuse to give their allotted share toward the common fund, the head of the Court and the head of the Community shall be obliged to separate them from the whole community of Israel, from intermarrying with them, or permitting them to take part in any religious function.

It was further agreed that from this day forth no community shall be permitted to withhold their apportioned share of the tax whether in whole or in part because of any claim which that community claims to have against the General Organization, but the payment of the tax shall be made, and then the claim adjusted by the Sages of the time.

Section 3

It is often been found that men are engaged in *Shehitah* who lack adequate authorization,[1] or having received authorization fail to review their studies and forget the law, thus causing their fellow-Jews to eat forbidden food. Moreover many fail to examine the knife in the proper manner. We therefore urge the head of each province and settlement to send an investigator, so far as possible, to review the necessary laws with the *shohetim.*

Section 4

We have further decided that every head of a community has it as his duty to interfere with the buying of wine from Gentiles. If it is proven that any Jew has drunk wine in the house of Gentile, it shall be forbidden for any other Jew to marry his daughter, or to give him lodging, or to call him to the Torah or to allow him to perform any religious function.

We have further decided that every Jew living in a wine-growing province, shall make his own wine both for his own use and for sale. One shall not be permitted to keep wine of Gentiles in the same room as properly prepared wine.

The head of the courts of the communities shall make as stringent laws regarding this matter as they may consider fit, and we will assist them in the enforcement of them. Any Rabbi who shall commit any infraction of this law, shall be deposed from his position, and anyone who shall thereafter call him *Rabbi* or *Haber* shall be punished.

Section 5

No one shall be appointed a Rabbi without the consent of three heads of academies; the authorization as *haber*[2] given any person by a Rabbi outside of Germany, shall

[1] See *Takkanot Shum*, above, p. 231, section 26.

[2] *Haber* is a title used in the Talmud for scholars. In Mediaeval Germany it was a layman's title of honor, given for acquaintance with the Talmud and *Halaka.*

not be considered valid; no authorization as Rabbi shall be given any young man who has not been married for two years.

Section 6

It is well known that much trouble has arisen in Jewish communities and settlements because of the wicked Jews who engage in trade of counterfeit coins, the coins in some cases being completely valueless, in other cases counterfeited to look like a more valuable one than it actually is. As a result instead of it being said "The remnant of Israel does no evil", they say, "Where is the God of this nation?" We have therefore agreed that from this day forth, anyone found engaged in such practices shall be punished with all the severity described above. This shall also apply to those who forge documents in collecting debts.

Section 7

We have agreed that anyone who buys any wares from one who is well-known as a thief or lends a thief money on any pledge, shall be punished in the manner described above.

Section 8

Anyone who borrows money or wares from Gentiles with the intention of failing to pay for them shall also be ostracized in the manner described, and no Jew shall buy any wares from him or have any commerce with him. Moreover if he is imprisoned for such an act, no Jew will be permitted to defend him, so that the Gentiles may know that we are not generally guilty of such corrupt practices.

Section 9

We beg of every Rabbi who is not a member of this council, to agree to these decisions and sign his name to them, and if he finds any persons disobedient to these ordinances to refuse to permit such men to intermarry with

the community. Any Rabbi who performs a wedding for such as disobey these ordinances, and also those who intermarry with them, shall be punished and will be considered among those who separate themselves from the community.

Section 10

Any Jew who drinks milk bought from a Gentile,[1] when the milking was not witnessed by a Jew, shall be punished so that no Jew will eat from any of his dishes, and his friends and neighbors shall be obliged to give information concerning him to the nearest Rabbi. If the transgressor be a scholar or a teacher or the head of a Court or the President of a Community he shall be removed from his position.

(Whoever[2] attempts to make a collection for the sake of dowering his daughter, shall be permitted to give her no more than one hundred and eighty *gulden*. If he has promised more he shall be given nothing, even though he have credentials from all the German Rabbis. Moreover no contributions shall be given to wicked men. Of course no Rabbi ought to sign any documents in such cases).

Section 11

Whereas[3] we have noticed that many Jews wear clothing made after the manner of the Gentiles, and we have also noticed that many dress themselves and their daughters in costly clothes, therefore have we decreed by a severe

[1] Milk bought from a Gentile was considered prohibited because of the fear that the Gentile might have mixed with the cow's milk the milk of an unclean animal. There was no apprehension therefore when the animal was milked in the presence of the Jew who bought it. In the Hebrew original the statement of R. Solomon ibn Adret declaring the vessels in which such prohibited milk was boiled likewise prohibited is accepted; for a further discussion of the matter see *Yoreh Deah* 115.1, and R. Solomon ibn Adret's *Torat Ha-Bayit* 7.4.

[2] This section was expunged by unanimous vote as can be seen from the note at the end of the Hebrew text.

[3] See above chapter VII, *Takkanot Shum*, section 1, and below Chapter X, Text A.

decree that within thirty days after hearing this decree each community shall take action in this matter. They shall also take action against wearing clothes of mixed linen and wool, and also regarding the prohibition of usury.

Section 12

No[1] Jew in our provinces shall be permitted to publish any book, new or old, at Basel[2] or any other city in Germany, without the permission of three Courts; if anyone transgresses this law and publishes the books without permission, no man shall buy the books under the punishment of excommunication.

Section 13

No Rabbi or head of a Court shall extend his jurisdiction over communities or districts which are traditionally subjects to another court; if any men refuse to obey the orders of their court and prefer to choose a Rabbi for themselves, that Rabbi or Teacher shall be excommunicated as shall also be those men until the heads of the provinces are reconciled to them.

If any court declares any punishment against any transgressors by authority of our ordinances, all Jews shall be obliged to obey the order of the Court.

We have decreed thay any *herem* or decree from any Rabbi outside of Germany against any Jews in Germany shall be invalid.

Whatever sum is decided upon by us as necessary shall be collected each year, and each person shall pay the sum assessed against him. If any Jew fail to give their share and disobey the agent of the General Community, their names shall be announced in every community in Germany. The announcement shall take this form: "The following men, who are mentioned by name, have been separated from the remainder of the Dispersion, they may not mingle

[1] Compare Chapter X, Text D, section 1.

[2] For the importance of Basel as a centre of Jewish printing in this period see J. E. *s. v. Typography.*

or intermarry with us, neither they nor their children, and no person may recite for them the benediction of marriage. If any one transgresses this order and does marry them, whether he act willingly or under compulsion, the marriage is declared void."

If any member of our people goes before a Gentile Court, and the leaders of the Community find it impossible to compel him to obey Jewish courts, announcement shall immediately be made concerning him in all the communities so as to compel such a person to present himself before the court of Frankfort or Worms or Friedburg or to any court which the defendant will select. If anyone of those found guilty fail to repent within thirty days of the announcement he shall be compelled to pay a fine to the Charity Fund and to the Government in accordance with what will seem fit to the judges. If this will not be sufficient to bring him to terms, we shall seek permission from the Government to do justice and to compel the guilty one to defray all the expenses.

CHAPTER IX
TAKKANOT OF CANDIA

The following text has been reprinted from the *Hoffmann Festschrift* (p. 267), where it was originally published by Dr. H. Rosenberg of Ancona. Dr. Rosenberg did not have before him the manuscript of the Takkanot, but a copy made from it by this predecessor, Rabbi J. R. Tedeschi. At the time of the publication of that text, the manuscript was inaccessible, but at present it is in the possession of Mr. D. S. Sassoon of London, who very generously sent photographs of the missing portions to the present writer. Unfortunately the photographs were not sufficiently legible for publication. It seems probable that Dr. Rosenberg's assumption that the defective state of Rabbi Tedeschi's copy was due to the loss of a page, is inaccurate; it is more likely that the missing portions of the Takkanot were never copied. In any case it is still impossible to reproduce more than a part of the original text, although we have the complete text of the revised Takkanot made by Rabbi Zedaka.

As has been stated in part I (p. 84) R. Zedaka's style is quite different from that of the writers of the original Takkanah. His is that of the Spanish-Italian philosophical schools, while the original is in the rhymed prose which is more common in France and Germany. Moreover, R. Zedaka changed the order of the sections. In printing the texts, I have followed Dr. Rosenberg in placing the two versions side by side, and retaining the order of R. Zedaka since our text of his revision is more complete. The translation, too, follows the text of R. Zedaka.

TEXT

גדר שלא ישיג א' גבול רעהו להוציאו מביתו	גדר שלא ישיג אדם גבול עמיתו להוציאו מביתו
ראשונה הסכמנו ותקנו לאמר שמן היום הזה והלאה לא יורשה שום אדם הנקרא בשם יעקב וממי יאודה יצא בסיבה מהסיבות להרבות מהר ולהרחיב מתן לאחד מבעלי בתים על אודות בית מביתיו נתון לזולתו בשכר, מבלתי רצון האיש ההוא הדר	תשיעית.–עמדנו ע"ד השגת גבול. גזרנו למנוע השתדלות להוציא חברו מביתו שהיה דר בו עם בניו ובנותיו בהרבות לבעל הבית מהר ומתן, והרי הוא בכי יותן, ואל יפתה את בעל הבית בדברים להוציא מביתו את אחיו העברים למען יכנס הוא בתוכו,

בו ראשונה להעתיק משם אהלו ולהפרד מאתו בשלום מצורך [אולי צ"ל מִצורף] לזה, אם בעל הבית עצמו ר"ל המשכיר הבית ההוא יבקש עלילות ותחבולות על השוכר להוציאו מביתו או להרבות שכר הבית כפי מה שירבה לו מסית יסיתהו ויכריחנו לצאת מביתו בחושבו עבור יום או יומים להשכירו לאיש הבליעל אשר הסיתו לגרש האיש מביתו, על כזה וכזה מסכימים מקבלים ומקיימים יחד כלל קהלתנו בקנס ברכה שלא יורשה שום אחד מאנשי קהלתנו לשכור הבית ההוא אשר גרש ממנו השוכר הא' עד מלאת לו שנה תמימה אשר התגרש הדר בו ראשונה זולתי אם המסית או המדיח יגלה אחן האיש הדר בו ראשונה להודיעו אופן העקבה והמרמה וירצהו באופן מה עד יעביר על חטאתו וישאר המגורש מרוצה בעת ההיא יותר לו לתור לו מנוחה בבית ההוא, ואמנם אם ח"ו יהיה איש רע מעללים יחפוץ ברשע וזדון לבטל הגדר הזה בקושי ערפו ורוע לבבו הנבזה, אנחנו מסכימים ומחייבים הקונדסטאוול'ו או זולתו מהממונים הנמצאים ביום ההוא לקבץ כל הקהל יחד באחת הכנסיות ושם מגלה דעתו בקהל בעולתו אשר עשה וקורא לו פורץ גדר בישראל, ושם יחייבו כל איש ישראל להבדל ממנו, בשמחתו לא יתערב ואל יקרב באבלו, ושלום על ישראל.

ויעש לו עליות וחדרים ישא עיניו אל ההרים, בעליות מרווחות בהדורים ובאו לו המים המארחים למרים. ע"כ יזהר כל אדם לנפשו פן יעשנו העון הזה וילכדנו, כי השיג גבול רעהו, והמעניש האמיתי יענישנו והכתוב צווח בית תבנה ואיש אחר יחנכנו.

גדר בעד טהרת בית הטבילה ונקייתו

עוד יש לדעת שכל ענין בית הטבילה אשר הכוונה בו טהרת בני

גדר לטהרת בית הטבילה

עשירית.–ידוע כי בית הטבילה עשוי למצוה מעולה, כמה נישאה וגדולה לטהרת בנות ישראל כאשר

ישראל כמצות תורתנו וחז"ל ועתה קצת מבני עמנו חלפו חק בעשותם בו כל צרכם בדמותם שהכוונה בו היתה לתועלת פעולותיהם המכוערות אשר יעשו בתוכו עד ילכלכוהו ויטנפוהו והיו מימיו כרכום וטיט הננו מסכימים ופוסקים בקנס ברכה שמן היום הזה והלאה לא יורשה שום אדם לעשות בו מלאכה כלל, לא רחיצת בגדים, ואף כי שריית עורות, לא רחיצת כלים ולא שריית נזרי חביות וקשריהן וכדומה בהן, ולהשלים הכוונה בפועל, הפך כוונת הסכלים אנחנו מסכימים שהקונדוסטבל"ו הנמצא בכל זמן יתחייבו לטהר את המקוה בכל שנים חדשים, וזה כשיסגור דלת הבאר אשר בחצר המקוה עד שינקוהו כל המקוה שואבי המים, ויתר הפועלים המקבלים ממנו רב התועלת ואחר יפתח להם הדלת לעשות מן הבאר עסקם כמנהגם.

גדר בעד ע"ש ועיו"ט

עוד יש לדעת שבראותנו קצת מבני עמנו ישליכו הדרך הישרה אחרי גוום ובערבי שבתות וי"ט איש איש על עבודתו ועל משאו ישיתו יד עד בוא השמש והיו עינם ולבם להשלים המלאכה אשר בידם ואף כי בהיות בעל נצרי מחזיק בו ולוחצו ופעמים יהיה היום קודר בלא חמה וימשך לזה שיחללו שבת אם בעצם ואם במקרה, אנחנו מסכימים ופוסקים בחיוב הברכה עליהם, נוסף על שהם עוברים גם על איסור דבריהם, שלא יורשו כלל מזכר עד נקבה אשר בעדתנו לעשות מלאכה מחצות היום ומעלה בערבי שבתות וי"ט כמצות רז"ל אף צונו בתורתנו האל, וידוע כי הטובלת בנידותה צריך שלא יהיה דבר חוצץ בעצמותה משום ואל אשה בנדת טומאתה לא תגע לגלות ערוותה ומעשה בשפחתו של רבי שרירה [צ"ל שירדה] וטבלה וכו' ע"כ רצנו אנחנו חתומי מטה לקראת המערכה לקיים דבר ההלכה, שמורה וערוכה דתנן במסכת כלה (פ"א), שכן הנדה היא אחד מעשרה מיני ממזרות הנמנין שם בגמרא ואלו הן עזי פנים, שבגללם כל מחלוקת ועברה ומפני זה עמדנו ותקנו ואחרון אחרון חביב גמרנו והעשירי יהיה קדש לה' הסכמנו שלא יורשה שום א' מזרע היאודים לילך למקוה לרחוץ בו בגדים, הצניפות והרדידים והבגדים החמודים וכמו כן לא יתעסקו בו בשאר תשמישי דברים המביאות לידי טנוף ושמרים פן יהיו בני הטיבלות [צ"ל הטובלות] ח"ו ממזרים ולעשות את כל דברי התורה הזאת.

גדר בעד בטול מלאכה בערבי שבתות וי"ט

שביעית.—ידוע כי יום הז' אות הוא לישראל ולנחלת אריאל כי בם בחר האל והשכין שכינתו למולם שנא' ביני ובין ב"י אות היא לעולם והיא מורה על בריאת העולם, ע"כ גזרנו על אנשי קהלתנו כלם, קטון וגדול שם הוא למקטנם ועד גדולם ליבטל כל העם ממלאכה בערב שבתות וי"ט ולצרכי היום נהיה רצים ושבים, וצדקה בעד העניים נהיה גובים, וכולנו כאחד טובים, ושיעור ביטול כל העם ממלאכה יהיה מן חצות ולמעלה, והיינו רק למעלה.

כי ינטו צללי ערב ופנה היום אל מצות אלהיו יפנה, לא יעבוד עוד בלתי אם היה שואב מים לצרכי רבים לשבת וכיוצא בו מהענינים הצריכים להם ומותרים לעשות.

נדר שלא לקבול בע"ש ובעי"ט

עוד לדעת כי מאשר ראינו המנהג הרע שצמח בקרבנו והוא לבשתנו וכלמתנו. יען כי רבים מבני עמנו יקבילו את אחיהם היאודים בע"ש ובעי"ט לפני המשפט באופן כי יאחר שם עד סמוך לקדוש היום והם ימנעים מצרכי שבת ומשמחת יו"ט הסכמנו לתקן את אשר עותו רוב אחינו בשבתות וחדשים ובמועדיהמקודשים שמכאן והלאה כל איש ישראל הנמצא בינינו לא יורשה בקנס ברכה לקבול את חברו הישראלי בשום מקום המשפט הן אצל גוים הן אצל יאודים בע"ש ובעי"ט וזה למען לא ימנע משמחת י"ט שיכין ג"כ צרכי שבת לה' ולא תהיה עדת ה' כצאן אשר אין להם רועה.

נדר בעד התפלה

עוד יש לדעת שעל ענין החטא הגדול והאשם המופלג אשר בעדו אבל אשמים אנחנו ובו אנחנו נמקים בהשליכנו אחר גוונו ענין התפלה אשר בה נתחייבנו ליחד ולרומם אלקינו לטוב לנו כל הימים לחיותנו כהיום הזה לטהר נפשותינו בנזירת רצונו ית' וית' ורבים מאתנו בבוא עת התפלה בשבתות ובחדשים ובחגים ובמועדים מהם יפנו דרך כרמים גנות ופרדסים ומהם יפנו אל חוף הימים אל אניות אבה ומהם יפנו אל ערכאות הדיינים גם בשווקים וברחובות לבלי

נדר שלא לקבול בער"ש וערבי יו"ט

שמינית.–צריך אדם לכבד שבת ומועד מבע"י ראינו, וכן הוא אומר והיה ביום הששי והכינו, לכן כדי שיהיה כל אחד שמח בשבתו, הוא ובניו ואשתו, וכל פמלייתו, הנלוים אתו, ולא יעצב כל אחד מה יהיה משפטו, תקנו שלא יורשה שום אחד לקבול את אחיהו הישראלי מחצות היום ומעלה, הן לפני גוים הן לפני יאודים, על אודות צניפות ורדידים, או על עסקי מקח וממכר ושאר דברי חפץ ואשכר, על שיהיה לישראלים שחות ושמחה ונסו יגון ואנחה בערבי יום מנוחה, ויכינו בששון צרכי שבת, ובזכות זה יצרנהו כאישון בת.

(נוסח ראשון של נדר זה חסר בכ"י)

תועלת רק אחרי שרירות עיניהם לבם
הולך להשביעם מתאוות הגשמיות
הכלות והאובדות אשר אין מבוא
לנפש הנשארת להם כלל, ולא ישיבו
אל לבם אדות החטא הגדול אשר בו
המה נכשלים בעזבם את בית מעון
אלקים לבלתי המציא שם את עצמם
בעת התפלה לשפוך שיחם לפני צור
מעתם אשר בידו מחקרי ארץ
ותועפות הרים לו להללו ולשבחו
כאשר חק גזרת רצונו עליהן, עד
שכאשר יבקשו אפילו עשרה בני אדם
לא ימצאו בבית האלהים למלאת חק
התפלה והמה גורמים לשכינה לחרות
בנו מסיבת מניעתם מלהמצא את
עצמם בבית האלקים בעת התפלה
ובפרט בשבתות ויו"ט היא בגלל היותם
ספר... (חתום?) ולו היתה התנצלותם
אמיתית החרשנו ואולם לא זו הדרך
ולא זו העיר עינינו הרואות תאות
חשקנו בקריאה כל ששת ימי המפעל
ואף כי נקרא ספר, קריאתנו קריאה
חלושה מן שפה לבד מי יתן והיינו
שמים לבנו אל כוונת דברי התפלה
לבד לבלתי היות מוצא שפתינו
וקריאתנו בתורה כמצות אנשים
מלומדה וגם בשבתות ובחגים ובמועדים
לא תהיה הכרת הבדל ויתרון בין ימי
הקדש ובין ימי החול וזה דבר זר
מאד והוא עון פלילים. בראותנו הענין
המקולקל והמעוות הזה ההוה בינותינו
ואין כל אחד מאתנו נוסר מעצמו
להיישיר מעקשו, ואנחנו בשכבר
התנצלנו כי לא מדעתנו טוהר לבנו
ומרחבי רעיוניו הואלנו לפצות פה
בהוראת אמרים לפני קהלתנו בחירת
אלקים כזאת ובפרט לפני השוגים
האצילים אנשי החכמה והתבונה
להורות להם את הדרך ילכו בה על

שכבר ידענו בבחינת עצמנו כי קטנם
עבה ממתנו ואולם המישרים אֵת שמנו
והמזכירים את עצמנו ולאשר ראוי
להזכיר למען יוסר פוקת המכשול
והפשע ממנו ומנפשותינו אנחנו מסכימים
ופוסקים בקנס ברכה אשר נעשה
ואשר יעשה שמהיום הזה והלאה לא
יהיה רשאי שום אדם מאנשי קהלתנו
לצאת בשבתות וחדשים ובמועדים
מתוך הקהל מבלתי היות לו סיבה
מכרחת עד צאתם מבה"כ שחרית
ואולם אחרי אשר יעיר משנתו יתן אל
לבו לשים פעמיו אל מעון דביר
אלקינו אף לא ללכת אל חוף האוניות
ולא אל מגרשי העיר יצא להנער
ולהתעדן בשום סיבה ועילה ואולם
כל עדת ישראל הנקראים בשם יעקב
עובדי אלקים חיים ישחרו אל מעון
בית ה' ומקום משכן כבודו לקדש צור
מעוזם אשר הוא התענוג הרוחני האמיתי
ומעדן הנשמות ואחרי הפטרם מן
התפלה יהיו רשאים לפנות גם אל
התענוג הגשמי העתיי, ואולם העבדים
הידועים אשר אין טבעם לפנות אל
התענוגים הגשמיים בעתים ההמה יהיו
מחוייבים שבעת אשר ישלח אחריהם
חזן הכנסת מפרשת נשמת כל חי
והלאה יהיו מחוייבים מיד בלתי
התרשלות להפסיק למודם ונהרו אל
טוב ה' להמציא עצמם אל בית
האלקים לכבוד בוראנו ית' ויתʻ
ונדעה נרדפה לדעת את ה' כשחר
נכון מוצאו ויבא כגשם לנו במלקוש
יורה ארץ נעתר אליו ויעתר לנו
ועזרה בצרות נמצאנו וממאסר הגלות
יצילנו ויפדנו ומאפלות לנגוהות יהלכנו
ויראו עינינו וישמח לבנו כי בה' בטחנו.

גדר בעד החתנים

אמרו רז"ל (ויקרא רבה כ"ד ו') כל מקום שאתה מוצא גדר ערוה אתה מוצא קדושה והתקדשתם והייתם קדושים, קדש עצמך במותר לך (ע' יבמות כ' א') ובכן נהגו אבותינו הראשונים קדושה לעצמם וכרתו ברית לעינם והחמירו על עצמם שכל המשודך בל יעבור מבית משודכתו עד עת הכנסתו בחופה ואפילו גדר היה מפסיק ביניהם אילו פנעו בדרך זה הופך לצד זה וזה הופך פניו לצד זה כאילו עקרב עוקצם וקיימו בנפשם החכם עיניו בראשו בראותם את הנולד כי קרוב הדבר אחר שנשתדכו אם יקלו בכניסה ויציאה לבוא לידי יחוד והרי בטלה גזרת דוד וב"ד שגזר על יחוד פנויה כי בודאי היא לא אשתו והוא לא אישה ותורת פנויה עליה ורבים השיבו מעון ויהי מקרוב כעשר שנים גדר אבנים נהרסה ואנשים אנשי בליעל התחילו לפרוץ גדרן של ראשונים ונהגו קלות ראש עד שהקילו בעצמם ליכנס בבית חמיהם ויאכלו וישתו שם וקשטו את בנותיהם ויושיבון לפניהם ולהבת היצר בוערם בקרבו לא ישוב דרך הפתח אשר בא בו עד הרגילו עצמם לדבר עבירה ומקורה הערה ויהי כי ארכו לו שם הימים לא ימנע עצמו לבוא בדמים, והיא גם היא לא זכרה אחריתה ותעל צחנתה לגלות את ערותה, המה יצאו העירה לא הרחיקו והנה עוברה בצדה כריסה בין שיניה, ואביה ירק ירק בפניה, ויהי כי קרבו ימיה ונהפכו עליה ציריה מי ראש ולענה השקוה, לנפול שלייתה מבין רגליה וכי לא נתמלאת מחשבתם המילדת יפילו במכמרתם בקשו אשה חכמה להרוג

גדר בעד החתנים

ששית.–בעד החתנים לא יכנסו בבית נשותיהם בטמונים, פן יבואו לידי מעשה עם אשת מדנים, ויפול בידי אדונים אלקי האלקים, ואדוני אדונים, אוי למעלם כי נלכדו ברשת מצודות וחרמים וקללת המלכים והחכמים, גזרת דוד וב"ד, שגזרו על יחוד פניה, ומה ישיב כי יפקדהו גדול העדה ורב העלילה. ע"כ תקנו לבל יקרב אל פתח ביתה, ולא יביט בה אפילו לראותה עד יכנס לחופה, פן תלכדהו בושת וחרפה כי היא לא אשתו והוא לא אישה ואסרנום להתיחד פן יבואו לידי הגשה, ואבות אבותינו מעולם נהגו בדבר זה קדושה טהרה נקיון ופרישה, וגם אנו תפסנו בעד קהלתנו לשמור נדרנו. ובזכות זה יזכו לבנים ובני בנים חכמים והגונים שומרי תורת אל ומקיימי מצות ישראל.

בערמה, העל אלה יתאפק ה' מחרות אפו בנו, הלא תבער כאש חמתו ומי יוכל שאתו ע"כ ראינו לנדור פרצה זו והסכמנו כלנו בדעת א' להחזיר הדבר ליושנו שמהיום והלאה שום משודך לא יהיה רשאי להכנס בבית חמיו עד זמן הכנסו בחופה ואם אונס יכריחנו וצורך לו ליכנס יצטרך לקחת שנים מן הממונים אשר יתמנו על כל עניני הגדרים הנזכרים או שנים מעלמא לבל יפרוץ גדר דוד וב"ד והנטפלים עם חתניהם ללמוד, ר"ל שצורך להם ללכת בבית חתניהם ללמוד להם לבדם יהיה מותר ליכנס ולצאת כי גדול כח ת"ת שמתשת כח המנוול וע"ד שאמרו רז"ל אם פגע בך מנוול זה משכהו לבה"מ (קדושין ל' ב'), ונודר פרצות יגדור פרצותינו ויראו עינינו וישמח לבנו עם כל המחזיקים ידינו לקיים מצות בוראנו.

גדר בעד לוית המתים זלה"ה

(נוסח ראשון של גדר זה חסר בכ"י)

עוד יש לדעת שבהשימנו על לבנו להיישיר כל מעקש המבואר אלינו שהצורך מכריח על ככה, מצורך [אולי צ"ל מצורף] אל היות הישרת המעקש ההוא הנהגת מדינית חשובה משגיח כל המין האנושי עליה אף כי העדה הקדושה בחירת אלקים אנשי התורה והמצוה ראה ראינו שמושכל ראשון הוא שמצות גמילות חסד הנעשה למשכן הנפש אחרי הפרדה ממנו ללכת אל בית עולמו ולשוב אל האדמה אשר ממנה לקח באשר הוא סוף כל אדם, גדולה היא מצות גמ"ח ויען היות הדבר כן הנו ידוע לכל בעל שכל את אשר אנחנו בכל עוז נצטוינו ונוסרנו והחהרנו בשמירת המדה החשובה הזאת ועם כל הזהרת

השמירה אשר הוזהרנו לשמרה ולהחזיק
בה כהיום נמצאים אנשים מאנשי
קהלתנו המשליכים אחרי גום כבוד
מתי ישראל מלוותם בהוצאת לכתם
אל בית עולמם ולא לבד נמנעים
מללוותם בחמלם על טרדת גופם
ואולם גם המה מתעסקים במלאכתם
ובאומנותם כבתחילה ולא ישיבו אל
לבם ולא דעת ולא תבונה שהמות
טבעי הוא הוא מתפשט אל סוג כל
המין החי אף בסכלותם המה חושבים
מחשבת הפתאים הרעים האומרים
כרתנו ברית את (ה)מות ועם שאול
עשינו חוזה שוט שוטף כי יעבור לא
יבואנו ׳ודבר רוע אכזריות הפעולה
כזאת פונה הוא אל תכלית הגרעון
ראוי לכל מאמין להתרחק ממנה
ואולם כל חי מדבר יאות לו היות
חושב בכל רגעי עתותיו כי כפשע
בינו ובין המות וכי אשר בידו נפש כל
חי ורוח כל בשר איש פעל אדם
ישלם לו וכארח איש ימציאנו ובכן
להיישיר כל כושל ממבוכת מחשבתו
ולהדריכו אל נתיב ההנהגה המשובחת
אנחנו מסכימים ופוסקים שבקנס ברכה
אשר בשכבר נעשה ואשר בכל זמן
מעותד להעשות מהיום והלאה בהפטר
נפש אדם מאנשי קהלתנו לחיי עולם
מבן חמש שנה ומעלה אחרי השמע
בהכרזה פטירת הנפש ההיא לכל
איש בעל מלאכה לא יהיה לו רשות
להתעסק במלאכתו בשום סיבה ועילה
אף יהיה מחוייב בעת ההיא להתבטל
ממלאכתו הוא וכל המתעסקים אתו
והמתלמדים ממנו עד אשר ילוו המת
משכונתו חוץ לפתח העיר. ואם סיבה
תעכבהו מללותו עד מקום קבורתו
יעמוד במקום סמוך לעמידת המלווים
עדי התרחק המת מעיניהם ויחזירו

פניהם איש איש אל מלאכתו ואומנותו ובזכות זה לא תאונה אלינו רעה ונגע לא יקרב באהלנו כי מלאכיו יצוה לנו לשמרנו בכל דרכינו על כפים ישאונו פן תגוף באבן רגלנו.

גדר בעד חרמות

עוד יש לדעת שבראותנו המנהג המכוער בהתמדת חרמים אשר בנקלה יעשו בעדתנו ויסנרו הכנסיות בעתות התפלה לפעמים על הכל הסכמנו ומרנו על כל איש עברי הנמצא בינינו לבל יורשה להרים אם לא יודיע הדבר ראשונה להקונדסטאבולו אשר יהיה בימים ההם אם יחפוצו להרשותו לסבה תראה להם ירשהו ואם אין יש לו לימנע מעשותו ואם ימרה את פיהם הנכבדי' ההם יגלו עונו ברבים וקורא לו איש מרי בעדת ה'.

גדר שלא לגזול לגוים

עוד הסכמנו שמכאן ולהבא שום א' מבני קהלתנו קטן וגדול שם הוא לא יהא רשאי לשקר לגוים ולגנוב דעתם הן במה שקונים מהם היאודים הן במה שמוכרים היאודים להם כי המשקרים לגוים וגונבים מהם מחללים ה' בגוים והנביא צווה שארית ישראל לא יעשו עולה ולא ידברו כזב (צפניה ג'. ג.) וכבר אמרו רז"ל על עון חלול השם שהוא חמור מכל העבירות (ע' יומא פ"ו א') ואמרו ג"כ חז"ל אין מקיפין בחלול השם (קדושין ג' א') וה' יברך את עמו בשלום.

גדר שלא לגנוב לגוים ולשקר להם

שלישית.—לא יורשה שום אחד, בעם כהן יחד, לגנוב לגוים ולשקר להם ולגנוב דעתם מהם כי המשקרים לגוים וגונבים אותם גורמים ח"ו חלול השם, והוא עון פלילי' ורושם, כי יאמרו אין אלוה בישראל הוי אריאל אריאל, שהרי כתיב (צפניה ג'. ג.) שארית ישראל לא יעשו עולה, והאיך עתה נמצא בין העברים גניבה קטנה או גדולה, אם לא כי צורם מכרם וה' הסגירם על כן להרחיק מעלינו חרפה, ולהסיר מעל זרעינו קול ענות ונדופים, קבלנו עלינו ועל צאצאינו, בנינו ובני בנינו, עד סוף כל הדורות אחרינו, את זאת התקנה הראויה והגונה, ובגללה נזכה לגדולה ולכהונה.

הנו אתאנו על החתום מבוארים,
צעירי הצאן אנחנו המבוררים מכל
ארבע קהלות קנדיאה העברים,
ובזכות זה, זה אלקינו קוינו לו דגלנו
ירים.

אני ברוך בר יצחק הסכמתי באלה התקנות עם יתר חברי החתומים מטה חכמי קנדיא"ה קדושי עליון אשר יעירו ויקיצו הלבבות להורות הדרך אשר נלך בה

מתתיה בר אלעזר מסכים
מנחם בן יואל מסכים
אלעזר בן החסיד רבינו מתתיה מסכים
יצחק בחור בן הרב ר' יוסף מסכים
שמריה בר שלמה בר יצחק הכהן מסכים
שמשון אגורא מסכים
אליהו הפרנסי בן החבר ר' ראובן מנהיג מסכים
פרנס קאפסאלי בר שלמה בן הרב יוסף זלה"ה מסכים
יהושע בר עובדיה הלוי מסכים
יאודה אנטולי בן הרב מסכים
בנימין בן הרב ר' יוסף בונופצו מסכים
זעירא זמן חבריא שמריה האיקריטי בר שלחה בן הרב מסכים
ישמעאל הרופא בן מיימון מסכים
מנחם בר יעקב הפרנס מסכים
שמואל בר גמליאל בן הרב ר' שם טוב מסכים

אלו העשר תקנות קיימו וקבלו עליהם ועל זרעם אחריהם כל הקהילות היושבות באי קנדיאה, וסימנם כף אחת עשרה זהב מלאה קטורת.

TRANSLATION

These Takkanot were made in the Communities of Candia and were re-established among our Communities by R. Zedaka. They are the ten ordinances which the princes, the leaders of the children of Israel, established for us that we may observe all that is written in them, for in that way shall we succeed and thus shall we attain wisdom.

1. Ordinance in regard to renting houses.

Firstly[1] have we ordained that henceforth no Jew shall

[1] Compare Takkanot ascribed to R. Tam, Text M, p. 181, section 2 and Takkanot of Italian Communities, 1554, p. 302.

be permitted for any reason to offer a higher rental for any house which is rented to another without the consent of the tenant. If the owner of his own accord ask an increase in the rental or demand that the tenant leave the house, no one shall be permitted under the pain of excommunication to rent the house from which the tenant has been evicted for a whole year from the time of the eviction. The new tenant may however come to an agreement with the former tenant whereupon he may remain in the house. If however, the new tenant is a wicked person and refuses to satisfy the evicted tenant, the *contestabile* or any other of the officers of the Community shall be empowered to gather the whole community to one of the Synagogues and there they shall reveal his wickedness to the whole community and he shall be declared one "who broke a hedge in Israel". Every man in Israel shall become obliged to separate himself from him, no one shall mingle with him in his joys, nor come near to him in his sorrows.

2. Ordinance in regard to the cleanliness of the Ritual Bath.

Whereas some of our people transgress the law by performing all their needs in the ritual bath thinking that it is intended for the use of their unseemly occupations, and as a result they pollute and defile it until its waters become green and like mud. Therefore we agree that from this day and hence, no one shall be permitted under penalty of excommunication to do any work in the Bath either washing clothes or soaking skins or washing dishes or soaking the stoppers of bottles or any similar work. In order to make certain the carrying out of this provision we ordain that the *contestabile* shall be obliged to see that the Bath is cleaned every two months. This shall be done by closing the door of the well which is in the court of the Bath until those who draw the water and the other workers who use it most shall clean the Bath. Then he shall open the door for them to use the well as is their custom.

3. Ordinance in regard to Sabbath and Festival eves.

Whereas we have seen that some of our people cast aside the righteous path and on the eve of the Sabbath or Festival they continue at their work until the setting of the sun, and their eyes and their hearts are set on the completion of the task in which they are engaged, and this is even more so when the master is a Christian and at times when the day is misty this results in violation of the Sabbath; therefore do we ordain and decide under penalty of excommunication, besides their transgression of a Rabbinical commandment, that no one whether male or female of our Community, shall be permitted to do any work after midday on the Sabbath eve in accordance with the commandment of our Sages. Certainly when the shades of night are spreading and the day has gone each man shall turn to the commandment of God and do no more work. There shall not be included in this ordinance those who draw water for the public needs for the Sabbath or similar permitted occupations which must be performed and which may be done[1].

4. Ordinance against lodging complaint on Sabbath or Festival eve.

Whereas we have seen the evil custom among us which is our shame and our disgrace, that many of our people bring their fellow Jews to Court on Sabbath or Festival eves, in such a way that they are delayed there till near the time for the sanctification of the day, and they are thus prevented from making preparations for the Sabbath and for the rejoicing of the festival; therefore have we agreed to mend that which they have perverted, by ordaining that henceforth no Jew among us shall be permitted under penalty of excommunication to bring his fellow Israelite to any Court, whether Jewish or Gentile,

[1] Rosenberg refers here to the statement in *Shibbale Ha-Leket* forbidding, in the name of R. Natronai Gaon, both men and women to engage in work on Friday afternoon, or on the afternoon of any day preceding a festival.

on the Sabbath or Festival eve.[1] This is ordained in order that he may not be prevented from enjoying the festival and that he may also prepare the needs of the Sabbath for the Lord, and that the Community of the Lord may not be like sheep which have no shepherd.

5. Ordinance in regard to Prayer.

We must further call attention to the great sin of which we are indeed guilty and because of which we are being corrupted: namely, that we cast aside the matter of prayer which we are obliged to maintain in order to declare the unity of our God and to exalt Him and to purify our souls. Many of us at the time of prayers on Sabbaths, New Moons, Festivals and Appointed Seasons, go about through the vineyards, gardens, and orchards, some of us turn toward the shore of the sea, to boats, and some of us go rather to the law-courts, or even on the streets and in the market-places, meandering uselessly, merely following the desires of the heart, satisfying the bodily cravings which pass away and are lost, which have no connection whatever with the eternal soul. They do not take to heart the grave sin of which they are guilty in forsaking the house of God, absenting themselves from it at the time of prayer, to such an extent that even when ten men are sought they are not to be found in the Congregation. This is all the more to be decried on the Sabbath and Holidays.

In view of all that has been said, we decree that henceforth no member of our Community shall be permitted under penalty of excommunication to leave the Congregation on Sabbaths, New Moons or Festivals except for a compelling reason, before the completion of the public prayers in the morning. As soon as one awakes from sleep he shall proceed to the house of our God; certainly he may not go to the shore or to the suburbs. Indeed even the pious students who are not in the habit of turning to bodily pleasures at those times, shall be obliged to interrupt their study without delay when the *Hazzan* sends for them at the time that he reaches the prayer of *Nishmat*.[2]

[1] Sabbath 1.2.

[2] For a similar ordinance compelling people to attend public worship see Ordinance of Castile, p. 355.

6. Ordinance in regard to affianced men.

Our ancestors had the custom that no affianced man should pass the house of his betrothed until the time of the *Huppah*. Even if they met on the street they would turn in opposite directions. But it has happened recently within ten years that this regulation has been broken down. Men of Belial have broken down the hedge made by the forefathers and have been so light-headed as to enter the houses of their future fathers-in-law and eat and drink there. It often happens as a result that indiscretions are committed, and this has led even to an attempt at abortion and to infant-murder. Therefore have we all agreed to bring the matter back to its original custom, that henceforth no affianced youg man shall be permitted to enter the house of his father-in-law until the performance of the *Huppah*. If for some compelling reason he will have to enter the house he shall be obliged to take two of the officers who will be appointed to look to the execution of these ordinances or any two other people, with him. Those who are studying with their fathers-in-law, that is to say, those who must go to the houses of their fathers-in-law in order to do their studies, they alone shall be permitted to enter the houses of their fathers-in-law, for the power of the study of the Torah is such as to weaken the force of the tempter. [1]

7. Ordinance in regard to Burials.

Whereas there are some members of our Community who cast aside the honor of the dead of Israel, failing to attend their funerals when they are being carried to their eternal home, and not only do they abstain from attending the funerals in order to spare themselves the trouble, but they continue to engage in their work and their art as before; they pay no attention to the fact that death is a natural thing which extends to all living things; and whereas indeed every person ought to be thinking at all times that there is but a step between him and death; therefore do we agree and decide that from this day hence, when any member of our community of the age of five or more, dies, it shall

[1] Compare Takkanot of Corfu, p. 316, section 1.

be forbidden for any man under penalty of the excommunication to engage in any work for any reason; verily he shall be obliged to cease work, he,[1] as well as those who work with him, and those who are being taught by him until they bring the dead body from his last dwelling place beyond the gate of the city. If any reason prevents him from accompanying the funeral party till the cemetery he shall stand at some place near those who are escorting the body until the dead body is removed from them and then they shall turn about each one to his work and art.

8. Ordinance in regard to declaration of a *herem*

Whereas we have noticed the blameworthy usage of announcing a *herem* for any light reason and closing synagogues at the times of prayers; therefore have we decreed that no one among us shall be permitted to declare a *herem* unless he first make the matter known to the *contestabile* of his day. If they desire to permit him to announce the *herem* for some reason that appears right to them they will permit it; otherwise he must refrain from doing so; and if he opposes the command of those honored men, they shall declare his sin in public and he shall be called a rebellious man among the community of the Lord.

9. Ordinance not to defraud Gentiles.

We have further agreed that henceforth no member of our Community whether young or old, shall be permitted to lie to Gentiles or to deceive them, whether in regard to what Jews buy from them or in regard to what the Jews sell them. Those who deceive Gentiles profane the name of the Lord among the Gentiles and against them the Prophet calls out, "The remnant of Israel shall not do iniquity nor speak lies"[2] and our Sages have said that the sin of profaning the Name is more severe than any of the others.

[1] *Moed Katan* 27b.
[2] Zeph. 3.13.

CHAPTER X

A. TAKKANOT OF ITALY OF THE YEARS 1416–1418.

The following ordinances are those passed by a meeting of General Commissioners for all the more important communities of Italy. This Commission was created by a synod that had been held at Bologna in 1416. In accordance with the mandate placed upon it by the synod of 1416, the Commission met at Forli, in 1418, to discuss the affairs of the Jews, especially with regard to the success of Martin V in obtaining universal recognition of himself as Pope.

In the course of introducing their own decisions the Commissioners quote that part of the decisions of 1416 by which their Commission was created. We have no other information as to what transpired at the synod of Bologna.

The text is here reproduced from a Halberstam Ms., now in the library of the Jewish Theological Seminary of America. This manuscript was used by Halberstam himself in printing the text of the Takkanot in the *Graetz Festschrift* (p. 53 ff.). The text as there given has been carefully compared with that of the manuscript and a few changes have been made. In spite of the paucity of the improvements required in the text, it was thought best to include the text and translation in this volume for the sake of completeness. On the other hand it is not been thought necessary to reproduce the various enlightening notes added to the text by Halberstam, and the letter of Guedemann which is published with the text in the *Festschrift*. The student who is desirous of delving further into the story of the men who took part in the synod will refer to the original articles.

TEXT

בהנו'א

לכבוד ה' ית' ולכבוד תורתו הקדושה ולכבוד ולמעמד שרי כל גליל וגליל וכל עיר ועיר כל אחד כפי מעלתו, ולתקון ולמעמד הק"ק מרומא וכל שאר קהלות הקדש יצו'. בהיותנו נועדים פה בפו'רלי אנחנו ח"מ בד' בשבת בי"ג ימים לחדש סיון שהוא י"ח לחדש מאיו שנת ה' אלפים וקע"ח מתבוננים ומתכוונים על תקון ומעמד בני ברית קהלות איטליא' יצ'ו, ראינו והתבוננו בהסכמות אשר נעשו בבולונייה בחדש טבת שנת ה' אלפים וקע"ו. וזה לשון ההסכמה ההיא במה שצריך לנו עתה.

בראותינו הזמן מתהפך בתחבולותיו והשעה צריכה לחכמים וידועים אשר יצאו לפנינו וישתדלו כפי כחם במשך מעמד הקהלות הקדושות יצו' שלא יהיה בנו פרץ ולא צוחה במחנ' הסכמנו וביררנו אנחנו הבאים על החתום ממונים כללים ברומא ופדוא ופיררא ובולנייא ורומאניא וטוסקאנא, אשר עליהם יהיה לשום עיניהם ולבם כל ימי עשר שנים ה'ל'ל לכל חדוש יתחדש באיזה מקום שיהיה. ואם יראה בעיניהם כי בעדו יהיה צרך התקבצם לתת סדר נאות לעמוד על הפרץ, יתחייבו הממונים הכלליים להועד במקום ממוצע ולשנס מתניהם לסייע למלאכת שמים ויהיה רשות בידם לגבות ממון כפי צרך השעה לתועלת הכללות וסדר גבויים יהיה כפי סדר גביית המס מרומא. והמעות שיגבו יושמו ביד הגזבר הנאמן אשר ביררנו לדבר זה הר" בנימין בכמ' מנחם ז"ל מקורינאלדו. והממונים הכלליים יוציאו המעות ההם בצרכי צבור לתועלת הקהלות כדרך שיורום מן השמים. וכל הסכמה ודרך והשתדלות אשר יראה בעיני כלם או רובם צרך ותקון הקהלות יצו' יקיימו הקהלות הקדושות ע"פ כלם או רובם ואם לסבה מן הסבות יזדמן שא' או יותר מן הממונים הכללים יהיה לו סבה והתנצלות אמתי שלא יתכן לו להיות בהשתדלות ההוא יתחייב להעמיד תחתיו מי שיהיה במקומו ותהיה דעת חבריו נוחה הימנו ואז יהיה פי השליח כפי השולח וכחו ככחו וידיו כידיו.

ואלה שמות הקרואים במנוי הכללי הנ"ז וחפץ ה' בידם יצלח.

ברומא מר" מנחם יח" הרופא בכ"מ משלם הרופא ינח"ל
ומר מרדכי בכמ"ר יואב ז"ל
בפדוא מר' אברהם הרופא בכ"מ יודא וצבי" הרופא נבתויא'
ומר' יצחק פינצי בכ"מ משה ז"ל
בפיררא מר" אלחנן משער אריה בכמ"ר מנחם ז"ל
ומר יוסף חזקיה בכמ"ר משה ז"ל
בבולוניא מ"ר שלמה פינצי הרופא בכמ"ר משה ז"ל
ומר" שלמה ידידיה בכמ"ר מתתיא תנצבה
ברומאנייא מר" יקותיאל חם מטיבולי בכ"מ יואב לבי מב"ע
ומר" אליא הנביא בכ"מ יודא הרופא וצבי נבתויא'
בטוסק'נה מר" יצחק בכ"מ משלם הרופא ז"ל הדר בסיינה
ומר' יחיאל בכמ"ר מתתיא ז"ל הדר בפיסא

והסכמנו שאם ח"ו יהיה הזמן גרמ' והמנוי הכלל הנז' יצטרך לתועלת הקהלות להוציא מעות שלא יתחייבו הק"ק מרומא וסביבותיה לגבות ולפרוע רק לפי ערכם ולפי חשבון הגבוי מיתר הקהלות הקדושות, ע"כ לשון ההסכמה הנז'.

ואחרי אשר ראינו כי עלינו הדבר לעשות כתבנו בכל סביבותינו וגם לשאר הממונים הכלליים הנז' שייטב בעיניהם לבוא להועד פה בפור'לי לתת סדר טוב בכל קיום הקהלות הנז' יצו' וקצתם באו וקצתם שלחו כתבי הרשאותיהם לנמצאים פה. ובראותינו כי נסמכו עלינו נשאנו ונתננו בדבר פעם ופעמים ושלש, ואחרי רוב המשא ומתן ראינו כי צריך עכ"פ לשלוח לאדונינו האפיפיור מלך הגוים יחיה וירום הדו לבקש מלפניו על עמנו ולעשות לנו בריבליי וקיומים חדשים ולקיים הישנים כמנהג האפיפיורים ואין ראוי לאחר יותר ובאלו אמרו מקדימין ולא מאחרין ובזה צריך הוצאות גדולות כידוע לכל משכילים, ובעבור ההוצאות הצריכות לעשות בדבר הזה וגם בעבור הוצאות אחרות הצריכות על תקון מעמד כללות הקהלות הנז' יצו', ראינו והסכמנו שיגבה עתה יד ליד תכף בלי אחור מכל הקהלות יצו' לחשבון דוקא א' וחצי לאלף מכל הממון והבתים והנחלות כפי סדר גביית המס מרומא וגם הסכמנו שיגבה עתה יד ליד דוקא א' וחצי לבית מכל אותם ששה משלהם או שיש תחת הנהגתם ת"ק דוק' או מת"ק דוקא' ולמעלה. ויען כי זאת ההוצאה היא צריכה להצלת הגופי' והעמדתם ואולי היה מן הניאות שתגבה לגלגלת לכן הסכמנו שכל מי ששה השלו או שיש תחת הנהגתו מת"ק דוק' עד מאה דוקא' יגבו ממנו עתה בעבור ההוצאה הזאת דוקא א' בעבור הבית מוסף על מה שמגיע לו בעבור הממון לחשבון א' דוק' וחצי לאלף כנ"ל. ומי ששה השלו ממאה דוקא ולמטה אם יתנדב ויפרע דוקא' א' בעבור הבית תבא עליו ברכה ולכל הפחות יהיה מחוייב לפרוע חצי דוקא' בעבור הבית מוסף על מה שמגיע לו בעבור הממון כפי החשבון הנ"ל. ולא יהיה פטור מפרעון הבתים ומפרעון הממון כפי הסדר הכתוב לעיל לא חברים ולא שום אדם זולתי מקבלי צדקה שהם לבדם יהיו פטורים מזה הפרעון. וגובי המס מרומא אשר בכל עיר ומדינה או אותם אשר נתן עתה כח בידם לגבות המס הזה הנז' יהיו מחוייבים לגבות כפי הסדר הנ"ל מיד בלי שום איחור, והגבאים הנז' יהיו מחוייבים לגבותו כפי הסדר הכתוב לעיל ולהגיע כל א' כל מה שיגבה בפדוא ע"י נאמן או דרך חלוף או מגבאי לגבאי באופן שיניעו המעות כלם בפדוא ליד מ"ר יקותיאל זיויא' בכמ"ר עמנואל חי' ז"ל מטוסק'נילה והוא יוציא' כפי הסדר שיתנו לו הממונים הכלליים הנמצאים בפדוא וכפי הסדר אשר נכתוב עליהם עתה. אך מה שיגבה ברומא וקפניא ומריניימא וסביבותיהם ומהמקומות הקרובות להם אשר יקשה להם להגיע המעות בפדוא יקובץ כל מה שיגבה מהמקומות ההם ליד הנאמן מה'קק מרומא והוא יעשה מהם כפי הסדר אשר נכתוב לו בעה'י. ויד כל הקהלות והממונים מהקהלות תהיה עם גובי המס הנז' להכריח כל יו'די לפרוע חלקו מן המס הנז' כפי הסדר הכתוב לעיל בשלמות בכל צד ואופן שיראה בעיניהם בין להרחיק המסרב בין בכל

אופן שיראה בעיניהם בענין שיד הקהלות תהיה על העליונה בע"ה. עוד הסכמנו לאשר ולקיים כל ההסכמות שנעשו בבולונייא בחדש טבת שנת ה' אלפים וקע"ו עד תשלום העשר שנים מאז נעשו היינו עד כל שנת קפ"ו ה'ל'ל. עוד הסכמנו שכל אותם שלא פרעו חלקם מן המס ברומא הנהוג בשני' שעברו יתחייבו גובי המס מרומא הנז' לפעול כנגדם כפי הכח אשר נתן להם מאז עד שיביאום במסרת הברית וישלימו חקם עכ"פ ויד כל הקהלות תהיה עם הגבאים הנז' לעזרם ולאמצם בכל צד וענין בגביית המס הנז'. גם בשנים ה'לל יתחייבו גובי המס הנז' לגבות המס מרומא הנז' בעת הראוי בשלמות מכל אדם מבלי שאת פנים לא ליחיד ולא לקהל ולעשות נגד המסרבים כפי הסדר הכתוב בהסכמות הנז' וכל הקהלות יתחייבו לעזור לחזק ולאמץ יד הגבאים עד שיביאו המסרבי' במסרת הברית ויפרעו חלקם עכ"פ בע"ה. גם בענין סדר המנוי הכתו' בהסכמות הנז' אעפ"י שלא נתקיים הסדר ההוא בשלימות עד היום הזה עתה הסכמנו שיתחייבו כל הקהלות לאשר ולקיים הסדר ההוא בענין שבכל קהלה הראויה לכך יהיה בה תמיד מנוי מסודר שישגיחו בקיום ובמעמד הקהלה ההיא ויהיה כח ורשות ביד המנוי הנז' לתקן תקנות ולגדור גדירות בקהלה שלהם כפי הצרך והשעה וכיד ה' הטובה עליהם ואיש לא ימרה את פיהם, ויד כל הקהל תהיה עם המנוי להכריח המסרבים בכל צד וענין שיצוה המנוי ההוא עד שוב המסרבים מרשעם ויקיימו מצות ה' והקהל.

עוד הסכמנו שמהיום עד תשלום הזמן הנז' לא יהיה רשאי שום יוד"י מתושבי העירות אשר בהם קהלות מבני ברית רומניקי להחזיק בביתו ולא בגבולו ולא ברשותו עדת משחקים לא עברים ולא נצרים, וגם לא יהיה רשאי שום יוד"י מהתושבים מהקהלות הנז' וגם לא מתושבי הכרכים והכפרי' לצחוק בשום צחוק מצחוקי הקובייאות ולא בשום צחוק מצחוקי הקלפים ולא בשום צחוק אחר לא הוא ולא אחרים בעדו ולא הוא בעד אחרים לא עם יודי'ם ולא עם נצרים לא בביתו ולא בבית אחרים. אך בצחוק עם טבלאות וקובייאות יחד ובצחוק הסקק"י בלתי קובייאות באלו השתי הצחוקות יהיו רשאים המצחקים לצחוק ובתנאי שלא יצחק בפעם א' יותר מארבעה בולניי כסף או שויים בצחוק אחד ולא יותר. גם בימי התעניות או אם ח"ו יהיה שום אדם חלוש אז יהיו רשאים לצחוק גם בצחוק הקלפים כדי להפיג צערם ובתנאי שלא יצחקו רק קווטרינו א' בצחוק א' לאדם א'.

וכל העובר על ההסכמה הזאת מעניני הצחוק יקרא עבריין ופורץ גדר וגם יפרע דוק' א' לקופת העיר ההיא על כל פעם שיעבור מלבד עונש בתי העירות אשר יצחקו בהם. ואם לא ירצה לפרוע הקנס הנז' יתחייבו הקהלה ההיא שלא להשלים עמו מנין עשרה ולא יניחוהו לקרות בס"ת ולא לעשות גלילה עד שובו מרשעו ויפרע העונש הנז'. וכל מי שיודע בשום יוד"י מהדרים בעיר שיעבור על ההסכמה הזאת יתחייב לגלות דבר ברבים בקנס העונש הנז'.

גם כדי להכניע לבבינו והצנע לכת עם שמויי"נו (השם אלהינו) ולבלתי התראות

לעיני הגוים הסכמנו שמהיום עד תשלום הזמן הנז' לא יעשה שום יוד"י או יודי"ת מתושבי הקהלות הנז' ולא מתושבי הכרכים והכפרי' שום מלבוש פודיר"טו צנט"ו משום דמות רק אם יהיה צנ"טו שחור. ושלא יהיו הבתי זרועות פתוחות, לא ישימו בהם שום פודירא משי משום דמות והבגדים שנעשו כבר אשר הם פודי' צנטו מצבע אחר בלתי שחור יוכלו ללבשם אך שיהיו הבתי זרועות סתומות וגם יהיו המלבושים ההם סתומים מהצדדי' ומאחריהם.

וגם לא ילבשו לא איש ולא אשה שום מלבוש פודי' לא זיבי'ליני ולא ארמי"ליני ולא וואר'די ולא רוס"י וואר"י ולא מסט'ורי ולא מצ'ולי ולא פויי"ני. אך אם יהיו פודי' מעורות אחרות יוכלו ללבשם או לעשותם ובתנאי שלא ישימו במלבושי' ההם שום עור מבחוץ בשום מקום מהמלבוש זולתי מהפו'די אשר המלבוש ההוא פו'די ממנו.

גם מלבושי הנשים שכבר נעשו עם בתי ידים פתוחות פודי' צנ'טו תלבשנה אותם תוך הבתים כרצונם אך לא תהיינה רשאות לצאת בהם בגלוי מחוץ לבתים ולא להתראות בהם בפתחי הבתים אם לא יסתמו ראשונה הבתי ידים או תלבשנה עליהם מקטורן בענין שלא יראה הצנט"ו כלל בעודם בחוץ. גם מקטורני הנשים שכבר נעשו פודירט"ו צנטו אם תלבשנה אותם בחוץ תעשנה ככל כחם שלא יראה הצנטו.

גם לא ילבשו האנשים יופיטי משי או וילוטו משום דמות כלל כל עקר אם לא בענין שלא יראו כלל בחוץ. וכן הנשים לא תלבשנה שום מלבוש משי או וילוטו מגולה אם לא בענין שלא יראה כלל כל עקר בעודם בחוץ. גם לא תלבשנה מלבוש שיש בו פרנצ"ה מגולה כי אם בפתחי בית הצואר ופתחי בתי ידים לבד.

גם לא תשא שום אשה נשואה שום קולנא על צוארה ולא רשת מוזהבת מגולה על ראשה זולתי הכלות לבדן תהיינה רשאות ללכת ברשת מוזהבת מגולה בלתי צעיף עד שלשים יום ומשלשי' יום והלאה ישימו הצעיף עליהם. גם לא יחגרו האנשים שום חגורה מגולה מחוץ לבתים עם כסף שיהיה משקל הכסף יותר מששה אונקיות וגם לא תהיה החגורה ההיא מכוסה וילוטו משום דמות.

גם לא ישאו האנשי' באצבעותיהם דרך תכשיט יותר מטבעת אחד זהב ואותו הטבעת ישאו אותו באיזה אצבע שירצו משתי הידי'. גם הנשים לא תשאינה יותר משתי טבעות או שלש בפעם א' לכל היותר.

וכן לא תחגרנה שום חגורה או רצועה מגולה שיהיה משקל הכסף יותר מעשרה אונקיות לכל היותר.

וכל העובר על דבר מדברי ההסכמות האלו דהיינו מענין המלבושים והתכשיטים הנז' בין איש ואשה יתחייב לפרוע עשרה בוליניי' כסף או שוויים לקופת העיר ההיא לכל פעם שיעברו. והאנשים יתחייבו בעד נשיהם. ואם יהיה מי שיסרב יתחייב הקהלה ההיא שלא להשלים עמו מנין עשרה ולא יניחוהו לקרות בס"ת ולא לעשות גלילה עד שובו מרשעו.

גם הסכמנו שלא תלכנה הנשים חוץ לביתם יותר משלש נשים בחבורה אחת עם שתי נערות זולתי לדבר מצוה.

גם לא תלכנה דרך טיול בשוקים וברחובות כשאפשר להם בענין אחר זולתי בזמן הפי"רי ואז תלכנה כפי הסדר הנז'. והאנשים יתחייבו בעד נשיהם בקנס הנז' בענין המלבושים.

גם האנשים לא ילכו הרבה בחבורה אחת וגם לא יתעכבו בפרשת דרכים ולא מחוץ לבתים אשר בתי כנסיות בתוכם יותר מששה אנשים יחד זולתי לדבר מצוה בקנס שיראה בעיני הממונים מהעיר אשר יהיו בימים ההם.

גם מפני אשר ראינו עושי החופות והסעודות מרחיבים לבם ומרבים לעשות יותר מכדי יכלתם ויותר מעשירי הגוים אשר אנחנו בתוכם וזה סבה להפסד ממון, לכן הסכמנו שמיציאת זה החדש סיון קע"ח עד תשלום כל שנת קפ"ו הל"ל לא יהיה רשאי שום יחי' מתושבי הקהלות הנז' להזמין בשום אחת מסעודות החופות רק עשרים אנשים ועשר נשים וחמש נערות בתולות בין חצונים ועירונים, אכן הקרובות עד דור שלישי, ושלישי בכלל, יכלו להזמין מהם כרצונם נוספים על המספר הנז'.

גם הסכמנו שאם הכלה תבא מחוץ לעיר על סוס שלא יהיו רשאים ללוותה בתוך העיר אשר תבא בה כי אם עשרה אנשים יודי"ם רוכבים על סוסים וארבעה רוגלים. ואם תבא בספינה לא יוכלו ללוותה מן הספינה עד בית התחתונה [כ"ה בכ"י ואולי צ"ל התחתונתה] כי אם שנים עשר יודי"ם או יודי"ת.

גם הסכמנו שבסעודות המילות לא יהיה רשאי שום יחי' מהקהלות הנז' להזמין בסעודה אחת כי אם עד עשרה אנשים וחמש נשים נוספים על קרוביו וקרובותיו ויחשבו קרובים וקרובות עד דור ג' וג' בכלל.

וכל מי שיעבור על שום א' מאלו הסכמות הנז' ויזמין אנשים או נשים בסעודות החופות או המילות יותר מהמספר הנז' יתחייב לפרוע לקופת העיר ההיא דוק א' על כל איש ואשה שיזמין יותר מהמספר הנז' כפי הסדר הנז'.

גם מפני אשר ראינו הדור פרוץ בעבירות ובשבועות שוא ובעריות ואפילו עם הנשואות ואינן נותנים לבם אל חומר העון ואין צרך להאריך בזה כי זיל קרי בי רב הוא. והנשים הנכריות מותרות בעיניהם ואינם נותנים לבם למאמר הנביא כי חלל וגו' (מלאכי ב'. א.) ובא הפירוש על זה בגמרא אם חכם הוא לא יהיה לו ער בחכמים ועונה בתלמידים ואם כהן הוא לא יהיה לו מגיש מנחה וכו' (סנהדרין פ"ב א'). והנה העון הזה חמור מאד מוסף על מה שאפשר שהם מולידים בנים אחרים ב"מ. לכך הסכמנו שיהיו הממונים הפרטים אשר בכל עיר ועיר מדינה ומדינה מתבוננים ומביטים לחקור אחר הפושעים בעבירות או בשבועות שוא או בעריות ויזהירום ויזרזום שישיבו מחטאם וישימו בלבם שלא יחטאו עוד, ולא יחללו את קדש ה' אשר אהב ולא יהיו פרוצים עוד בעריות ובמופקרות ולא יתערבו בנכריות. ואיש לא ימרה את פי הממונים ההם אשר יעיר ה' את רוחם להזהיר הפרוצים על ככה ויהיה כח ורשות ביד הממונים הנז' לגדור גדר

כדי ליסר הפושעים ולהשיבם מרשעם בכל צד וענין שיראה בעיניהם בין לענוש נכסין בין לנדות כאשר יראה בעיניהם לפי הצרך והשעה ויד כל הקהל מן העיר ההיא תהיה עם הממונים לחזק את ידם ולאמצם ולעשות ככל אשר יצוום. ואם ח"ו ממוני העיר ההיא יעלימו עיניהם מן הפושע מחמת יראת אדם או מושל יתחייבו ממוני העיירות אשר סביבות העיר הפרוצה בהודעם אל הדבר אל נכון לעשות כנגד הפושע ההוא בכל צד וענין עד שוב הרשע מרשעו. ויד הממונים הכלליים תהיה עם ממוני העיירות המבקשים לגדור לחזקם ולאמצם עס עזרת שאר הקהלות עד יתקנו המעוות וישיבו החוטא מחטאו. ואם החוטא ימאן לשוב או יכחש ויכפור עונו ויאמר שאינו צריך לשוב יאמן אז לנותנים סימנים ואמתלאות למה שנשמע או נראה מן החוטא וירחיקו החוטא ההוא מתוך עדתם עד שובו.

ואם לא ישמע ירחיקוהו גם מאנשי העיירות הסמוכות ואח"כ מן הרחוקות עד שובו או עד יוודע הדבר אל נכון שאין האיש ההוא חוטא ואז יקרבוהו בתוך העם ונקדש בתוכם.

עד כה ראינו אנחנו ח"מ להסכים ולגדור כפי הצרך והשעה וכאשר הורנו מן השמים. והממונים הפרטיים אשר יהיו בכל עיר ומדינה יהיה כח ורשות בידם לגדור גדירות ולעשות תקנות כל מנוי ומנוי בעירו ובמדינתו ולהוסיף ולגרוע כפי הצרך והשעה וכיד ה' הטובה עליהם. ובכל עיר ועיר מקום אשר ההסכמות האלו מגיעות יתחייבו קהלות העיר ההיא להעתיק התקנות והגדרות אשר בהם דהיינו מ.עד הסכמנו לאשר ולקיים כל ההסכמות. עד סופם ולקבעם בב"ה או בארון כדי שכל אדם יראה בהם ויקיימם ולא יוכל לומר הן לא ידעתי זה.

השם ישים בלבנו לאהבה אותו ולעבדו ולעשות כל החקים האלה ליראה את ה' שמוי"נו לטוב לנו כל הימים לחיותינו כיום הזה. ושלום עלינו ועל כל עמו ישראל אמן.

נכתבו ונחתמו שנת ה' ח'פ'ץ למען צדקו יגדיל תורה ויאדיר:

אלו שמות האנשים החתומים באלו ההסכמות הנ'.

אליא הנבי"א בכמ"ר יודא וצבי הרופא נבתויא'

יצחק יוייא' בכמ"ר משלם הרופא מב"ע

שלמה ידידיא בכמ"ר מתתיא תנצב"ה

יקותיאל ת"ם אליא'ו הנביא' בכ"מ יואב לב'י מב"ע

משה בכמ"ר אבינדור זלה"ה מורשה ק"ק פדוא והממונים הכלליים אשר שם.

משה יוייא' ויב"י בכמ"ר בנימן נבתויא' מורשה ק"ק אנקונה

מנחם יח"י בכמ"ר משלם יג'חל הרופא תנצב"ה

יקותיאל בכמ"ר מנחם מב"ע מקאב"י

מנחם יוייא' בכמ"ר אברהם זלה"ה

מתתיא יוייא' בכמ"ר מורינו ה"ר יצחק תנצב"ה

בנימין יוייא בכמ"ר משה זלה"ה

שלמה בכמ"ר משה פינצי מב"ע
שבתי יזייא בכמ"ר יואב תנצב"ה
בנימין בכמ"ר מנחם זלה"ה
בנימין יזייא בכמ"ר שמואל תנצב"ה
יוסף בכמ"ר אלחנן זלה"ה
שמואל יזייא בכמ"ר יואב זלה"ה
גם אנחנו בני ברית פורלי חתמנו שמינו פה
במצות כ"מ הממונים החתומים וממנו תראו וכן תעשו.
משה חיי בכמ"ר דניאל תנצב"ה
יחיאל יזייא' בכמ"ר אברהם נבתויא'
אברהם ישמא' בכמ"ר בנימין זלה"ה
נתן בכמ"ר יוסף ז"ל
יקותיאל יזייא בכמ"ר אברהם ז"ל

זהו ההעתק הסכמות שנעשו בפורלי כמו שמבואר למעלה. ואנו מנחם ומישאל ח"מ העתקנום והגהנום אות באות עם חתימותיהם במצות כבוד מורינו הנכבדים ב"ב בולונייא יצו' בעשרים יום לחדש סיון שהיא כ"ה מאיו שנת קע"ח לפרט אלף הששי ושלום.

מנחם בכמ"ר משה זלה"ה מריקנאטי
מישאל יזייא בכמ"ר דניאל זלה"ה

TRANSLATION

We, the undersigned, gathered here at Forli, on Wednesday the thirteenth of Sivan, corresponding to the eighteenth of May, of the year 5178, to discuss the communal affairs of the Italian Jews. We then examined the ordinances which had been passed at Bologna in the month of Tebet, 5176. The following is an extract of those ordinances:

"Whereas critical times appear to be approaching, and the Jewish communities are in need of wise and learned men to lead them so as to prevent any catastrophe, therefore have we, the undersigned, selected general commissioners in the communities of Rome, Padua, Ferrara, Bologna, and the districts of Romagna and Toscana whose duty it shall be to guard the interests of the communities during the coming ten years. If in their opinion necessity should arise for an assembly of their members they shall gather, and their council shall be empowered to levy such taxes on the communities as the situation will require. The

collection shall, however, follow the methods used in collecting the general tax. The moneys collected shall be placed with Benjamin b. Menahem of Corinaldo. The commissioners shall be authorized to disburse these collected funds as they will think necessary.

If for some reasons any commissioner will find it impossible to attend the meeting, he shall appoint a representative to act in his place. This representative must be acceptable to the other members of the council, and when thus accepted he shall be clothed in all the authority and power of his prinicpal.

"The following shall be the commissioners,

For Rome, Menahem b. Meshullam, the physician, and Mordecai b. Joab.

For Padua, Abraham b. Judah, the physician, and Isaac b. Moses Finci.

For Ferrara, Elhanan b. Menahem of Porta Leona and Joseph Hezekiah b. Moses.

For Bologna, Solomon b. Moses Finci, the physician, and Solomon Yedidiah b. Mattathias.

For Romagna, Yekutiel b. Joab of Tivoli, and Elijah b. Judah, the physician.

For Tuscana, Isaac b. Meshullam, the physician, who lives at Siena, and Yehiel b. Mattathias who lives at Pisa.

"We have further decided that if the Commission shall find that it must incur certain expenditures, the Communities of Rome and the vicinity shall not be obliged to contribute more than a fair proportion of the amount needed." Thus far the said Ordinance.

When we realized that there was need for the Commission to take action, we sent invitations to the above-mentioned commissioners to assemble here at Forli; some of them came in person and some are represented here by proxies. After a long discussion it has been decided that we ought at least to send to the Pope a committee to ask his protection for ourselves and our people, and to beg of him to issue a new *Privilegi*, and to re-affirm the old rights which we enjoyed under former Popes.

In order to cover the expenses involved in this matter and other necessary communal affairs, we have decided that the following taxes shall be levied:

A tax on the communities of one ducat and a half for every thousand ducats of property whether in houses, land or currency belonging to their members in accordance with the method of collecting the general taxes.

A tax of a ducat and a half for each family from all those whose property is valued at five hundred ducats or more. Because this is not merely a matter of defending our property but our very lives, it were perhaps proper that it should be distributed equally on all the members of the community.[1] We have therefore decided that everyone possessing five hundred ducats or less but more than one hundred shall pay besides his share in the above-mentioned property tax (of one and a half ducats per thousand, which is collected from the communities) an additional ducat for the family tax. Whoever is possessed of less than one hundred ducats is urged to pay a ducat as family tax if possible, but in any case must contribute half a ducat to the fund.

No one shall be exempt of the above tax except those who must be supported from charity.

The collectors shall gather the funds and send them as soon as possible, either by special messenger or by notes of exchange or by transfer from one collector to the other, to Padua, to Yekutiel b. Emanuel Hai[2] of Toscanella; he shall use the funds in the manner ordered him by the commissioners at Padua. However, the funds collected at Rome and Campagna and Marignano, and such other places near them from which it is difficult to send money to Padua, shall be sent to the treasurer at Rome. He shall act in accordance with the instructions which we shall give him.

[1] See *Baba Batra* 8b.

[2] It seems likely that this was a name, like the Babylonian *Haia* and the modern *Hayyim*. It is here to accept the interpretation of Zunz that it is an abbreviation for חיה יהיה "may be live" since in this case it is followed in the Hebrew by ו"ל.

All the Communities and their officers shall unite to compel every Jew to pay his share of the tax in accordance with the regulations. They may make use for this purpose of any methods that they may deem proper.

We have further decided to re-affirm all the ordinances made at Bologna in Tebet, 5176, for the term of ten years, that is until the year 5186 (1416–26). We have further decided that all who have not paid their regular tax in the past years shall be compelled by the tax collectors to pay what is due from them. In the future years, too, the collectors of the regular tax shall collect it in full in its due time without respect or fear of person. All the communities shall help them to compel such as refuse to obey to make full payment.

Every community shall have a local Commission who will look after the needs of that community, and such a commission shall have the authority to make ordinances and regulations for its community.

Moreover no Jew living in a community in which there are groups of the members of the Romanescan (?) Order shall be permitted to allow within his house or in any place under his control any group of players, whether Jews or Christians; nor shall any Jew living in such communities or other cities or villages be permitted to play dice or cards or any other game. No one shall play for the benefit of another, nor permit another to play for his benefit. But one may play draughts or chess provided one does not wager more than four silver *bolognini* at any one game. On a fast day,[1] too, one may play cards, in order to forget the pain, provided one wagers no more than one *quattrino* at a game, for each person.

Whoever will transgress this ordinance shall be denounced as a transgressor, and shall pay a fine of one ducat to the treasury of the city for every transgression. If he fail to pay the fine, the members of the community shall be

[1] See Ordinance of the Rhine Communities, above page 228, section 12 (text R) where one is permitted to play at games of chance only during festival weeks. To permit play cards on fast-days in order to forget the pain of the fast sounds very strange.

obliged to refuse to accept him for *minyan*, or call him to the Torah, or to perform *Gelilah* (the rolling of the scroll of the Torah). Anyone knowing of another Jew's transgression of this ordinance shall be obliged to make public announcement of it; otherwise he shall be punished by the above-mentioned fine.

In order that we may carry ourselves modesty and humbleness before the Lord, our God, and to avoid arousing the envy of the Gentiles, we decree that until the end of the above-mentioned term (ten years, 1416–1426) no Jew or Jewess shall be permitted to make a *foderato-cinto*,[1] unless it be black, and that the sleeves shall be open and that the sleeves shall have no silk lining whatever on them. Those who already possess such cloaks (*foderato-cinto*) of any color other than black, may continue to wear them, provided the sleeves are not open, and the cloaks are closed both in the front and back.

Neither shall any man or woman wear any cloak of sabel or ermine or mixed fur or of red material of mixed color or of muslin or of violet color. However, a cloak lined with fur may be worn, if none of the fur is placed on the outer covering of the cloak.

Women's cloaks which have already been made with open sleeves and are lined with fur, may be worn within the house but not in public, unless the sleeves are sewn or the cloaks are worn under an overcoat, so that the cloak cannot be seen at all. Also the coats of women which are lined with fur, must so far as possible be so made so as not to show the fur.

No man shall be permitted to wear a silk or velvet *giubetta* (cloak) except in such manner that is completely concealed. Neither shall women wear any silk or velvet dress except in such manner that it is completely concealed. Neither shall they wear any dress having fringes

[1] For a further discussion of these clothes see Guedemann's letter printed as an appendix to Halberstam's edition of these Takkanot in the *Graetz Festschrift*. Compare also Guedemann III, p. 330ff. Compare Takkanot of Castile, chapter XIII, section 5.

attached to it other than at the opening of the neck or the sleeves.

No woman shall wear any necklace on her neck or a gold hairnet on her head unless it be concealed except that newly-married brides may wear golden hair-nets unconcealed for thirty days after the wedding; after that time they must wear the veil over the net. No girdle which has a silver buckle more than six ounces in weight, or which is covered with velvet in any form, shall be worn by men in public.

No more than one gold ring may be worn by a man, but the ring may be placed on any finger. Women shall under no circumstances wear more than two or three rings.

Neither shall women wear a girdle or belt the silver of which weighs more than ten ounces.

The fine for the transgression of any of these provisions regarding the use of clothes and ornaments shall be ten Bolognini of silver or their value for the treasury of the city for each offense. Men shall be held responsible for the infractions of these rules by their wives. If anyone will refuse to obey the ordinances, the community shall refuse to admit him to *minyan* or to read the Torah or to perform the *Gelilah*.

We have also decreed that it shall be prohibited for more than three ladies and two maids to walk together in the streets except in the performance of some religious duty. Nor shall it be permitted for women to promenade through the streets and avenues except on festival days, when they shall be limited in the said manner. Men shall be held responsible for the observance of this section by their wives as in the case of the dresses.

Neither shall men be permitted to walk in large groups or gather at the parting of the roads, or before the synagogues in groups of more than six, except in the performance of a religious duty. The fine for the infraction of this section shall be set by the commissioners.

From the end of this month of Sivan, 178, till the end of the year 186, no Jew shall be permitted to invite to a

banquet more than twenty men and ten women and five girls. This number shall include both the people of the city and those without, but shall not include relatives as close as second cousins.[1]

If a bride arrives from another city on horse, she may be escorted by no more than ten Jews on horseback and four men on foot. If she come by boat she may be escorted to the place of the wedding by no more than twelve Jews or Jewesses.

At feasts of circumcision only ten Jews and five Jewesses may be invited in addition to the relatives. In this matter, too, relatives as near as second cousins shall not be counted toward the limited number.

Any infraction of these provisions shall be punished by a fine of one ducat to the treasury of the city.

In view of the inordinate spread of vice among the members of the communities,[2] it has been ordained that the local commissioners in each city and province shall reprove those who are guilty of immoral conduct. The commissioners shall have the power to inflict such punishent as they may deem fit, whether fine of excommunication. If the commissioners of any city refuse to interfere with any transgressors, the commissioners of the neighboring communities shall be in duty bound to take action against him. The General Commissioners shall assist the local commissioners in enforcing this ordinance. If the sinner refuse to repent, or deny his sin and claim that he has no cause for repentance, the circumstantial evidence against him shall be accepted as valid and he shall be removed from the community. If he remain recalcitrant he shall also be removed from the other communities.

[1] For similar limitations on banquets see Takkanot of Castile below, *loc. cit.*, and p. 228, Takkanot of the Rhine Communities, section 17 and note.

[2] Compare Takkanot of Corfu, below chapter X, section 1, and Takkanah of Candia, Chapter IX, section 6, where young men are cautioned against intimacy with their betrothed; there is no reference in the Takkanot to the prevalence of vice in the manner mentioned in these ordinances.

The local commissioners in every city and province shall have authority to add other ordinances than these for their respective jurisdictions. A copy of these ordinances shall be made in each city and they shall be placed either in the synagogue or in the ark so that anyone may read them.

Written and signed in the year 5176.
Elijah b. Judah, the physician.
Isaac b. Meshullam, the physician.
Solomon Yedidiah b. Mattathias.
Yekutiel b. Joab.
Moses b. Abigdor, the representative of the community of Padua and the general commissioners who are there.
Moses b. Benjamin, the representative of the community of Ancona.
Menahem b. Meshullam, the physician.
Yekutiel b. Menahem of Cavi.
Menahem b. Abraham.
Mattathias b. Isaac.
Benjamin b. Moses.
Solomon b. Moses Finci.
Shabbetai b. Joab.
Benjamin b. Menahem.
Benjamin b. Samuel.
Joseph b. Elhanan.
Samuel b. Joab.

We the representatives of the community of Forli have signed our names at the command of the General Commissioners above signed;
Moses Hai b. Daniel
Yehiel b. Abraham
Abraham b. Benjamin
Nathan b. Joseph
Yekutiel b. Abraham.

B

The following letter was sent by the synod of 1428 to the various communities of Italy, asking them to join in

an effort to regain the support of Martin V. It has been printed by Margulies in *Rivista Israelitica*, xii. 8, p. 178.

The letter is written in a very cryptic style which makes it almost untranslatable. Nevertheless an attempt has been made to give a rendering of its more important sentences. It is evident, that the writers were very much afraid of the possibility that the letter might fall into Gentile hands. There is no mention made of the Pope have brougth the terrible news that was the immediate occasion of the letter, is not mentioned by name.

TEXT

טופס הכתב שנעשה
בפלורינצה בשנת קפ"ח
כשנעשה לשם הוועד
השלישי לצרכי
הקהלות יע"א.

נאוני עדת ישראל ומבטיחי כל קצוי [ארץ] הרחוקים מכל מקומות משכיות חמדתינו אשר תדרוך כף קטנה האגרת עם קוצר מאמרי"ה הכורעת בתחינה ותפילה קצרה דורשת מאת היוצר כל יחוס ויחמול עליכם בהשגחה כוללת להעצים פאר ולהגדיל תפארת יקרתכם. והנה החלצה עם בחירת כל אופן הכניעה תמהר לשפוך שיח מרוב דוחק הזמן וגודל הסכנות עוברות על כלל אומתנו מאז נתננו מדרס לטומאת הפר"ושים ומכל המקומות נפשנו הרדות בתנועות מבהילות פן ח"ו כבוצר על סלסלות [י]שאונו במשאת החלה לעלות והרי כמה עברנו במעברות השידול להוועד ולהאסף ולגדור בפרצות לפני בעל היכולו' זמ"ניי ירום הודו ועדיין לא יצא פרי מעץ תלאובות המחשבות אשר פרשו המפרשים בפירושא וקיימו וקבלו עליהם שלוחי הקהלות הקדושות מה שקבלו ומאז שבתו העושים במלאכה והאמינו אשר כבר עשו חיובם והוציאו לפועל כחם כל המתנדבים בעם ה' ויהי אנשים אחרו פעמי מרכבות כבודם גזרה גזרת הערכה לשוב ולהוועד פה בפלורינצא למען ידענו על הנכונה לא מאומד ולא משמועה כי [אם] לא נמהר לגדור ולעמוד נגד המבקשים ח"ו לעשות נחרצה במקום אשר שם המקור מה לנו עוד תוחלת ותקוה והנה כל שאר פרטי ההשקטים עם כלל הסדרים קבענו וגזרנו וגמרנו אלה החוקים הרשומים אחרי המבטח וההשען על יוצרנו צורנו ועזר וסומך מאז השק בצדקת אבות היא שעמדה לדורות והוא למענו יביט וישגיח וירחם ה' המרחם אנא אחינו אנא אלופינו חסו ראו והביטו הביטו השקיפו על הצלת ישראל ובית יעקב כולו שנסו מתני הגבורה לתשועה הברו

חיצי השידול ואין עת לחבוש בטמון כי מאז יצאו אבותינו ממצרים לא עמדו על שפת ים הנסיון הזה כי [אם] לא יאבה הצור התמים יקובלו דברי המקטרג עתה בכתב וחיתום גזר דין אין עוד מקוה והנה נשיא דורנו הנאמן לכל סבל בראותו הצורך וההכרח ובהרגישו העלת הזוהמא לפני לפנים שנס מתניו קרא וצווח ובא בפניו וכחו ואונו הודיע וגילה מסתורי המצפונים ולכן עם קדוש בכלל ובפרט קהלות הקדושות רומניה לומברדיאה ושאר המקומות אשר קול אנחת המצוקות דורנו שומעים יעתרו ויפנו ונשמע קולנו בבואנו אל לשכות הקדש וישמע אליכם אל מלך יושב על כסא רחמים.

נשואי המעלות ותפארת הדרת ישראל אחינו הנעימים כ"כ [ב"ב] הקהלות אשר ברומניא ולומברדיאה ובכל המקומות [תדרוך] כף אגרת הכורעת וקוראה עם קרבת אהבה.

TRANSLATION

To the leaders of the community of Israel, in every place to which this letter shall come. Hitherto, the communities have often been saved from destruction and the menaces of our enemies were prevented from accomplishment, by the action of the synods who stood in the breach. Since the meetings of the Commission ceased new dangers have arisen. It was therefore decided to gather here at Florence, because we know it as a fact, and not merely from rumors, that unless we hasten to take action in defense of our people against those who wish to destroy us, there is no hope left for Israel. We have made various provisions for meeting the crisis. We trust in the Lord, who has stood as our Protector since the days of the selection of the Fathers. But now, brethren, be merciful and see to it that Israel be saved. Provide us with the "arrows of persuasion" for this is no time to bind (funds) in hidden places, for since our ancestors went forth from Egypt they have not been at a worse sea of trial than this. For if the words of the accusers be accepted and signed, there will be no more hope. The prince of our generation who is to be trusted in every respect), realizing that the poison has reached even the very highest places, girded his loins and cried out revealing the secrets (of the Papal Court). Therefore Holy People, and particularly, Communities of Romagna, Lombardy and the other places to which this letter will come, turn to the cry of this letter and may the Merciful God listen to you.

C

The following text is taken from a manuscript of מאמר חיי עולם in the library of the Jewish Theological Seminary whence it has been printed in Cassuto, *Gli Ebrei a Firenze* (1918). The section is quoted in a responsum, and is the only section of the decisions of the Conference of 1492, which has been preserved for us.

TEXT

(ורואה אני שהימים הראשונים היו טובים מאלה שמעיד אני עלי שמים וארץ שיש בידי קלף זקן חרותים וכרוכים בו כמה הסכמות ותקונים שנעשו במדינת פארינצא בשנת קפ"ט לפ"ק כי נועדו יחדו שם כל ראשי הקהלות שבכל גליל איטליאה ושלחו מורשיהם שם וחתומים שמותם בשולי הקלף ההוא לטוב יזכר שמם וזה כי ראו שהדור צריך לכך כי התרשלו לפרוץ גדר)

בהיותנו מוהרים לבלתי נשיך לאחינו נשך כל דבר אשר ישך ורז"ל על צד הסייג גזרו מפני אבק רבית על כמה דברים ועתה בזמנינו רבו המתפרצים ומלוים איש לחבירו בלי שמירת הדרכים והתנאים שהתנו באמרם האי עסקא פלגא מלוה ופלגא פקדון וגם מוסיפים פשע על חטאת מפני תקנת הלוואין חוקפי' עליהם הריבית במלוה.

לכן כל אדם יהיה נזהר על זה ולמען נחדל מעשק ידינו הסכמנו שכל מי שיזקוף הריבית על חברו במלוה או שילוה ברבית ולא ישמור דרך התקנות שתקנו חז"ל יהיה הרבית הינו שעבוד הרבית בטל מעקרו ולא יוכל המלוה להכריח הלוה רק בפרעון הקרן לבד.

ולהיות קצת הדור להוטים בזאת העבירה והיה במחשך מעשיהם ואינם מפורסמים כי אם ללוה ולאשר נשה בו הסכמנו בדרך הסייג והגדר ומשמרת למשמרת שיהיה כח ורשות ללוה להשביע למלוה אם שטר המלוה נעשה עם זקיפת הרבית ואם לא ירצה המלוה לישבע יאמן הלוה ויפטר מפני זקיפת הרבית.

ולהיות כי פשט דין ומשפט תורתנו הקדושה שאין שליחות לגוי מכן תרימו גם אתם (במדבר י"ח. כ"ח.) ולמען זאת נהגו לשלוח משכונות לישראל ביד גוי והלוה עומד ומעמעם ולוקח ממנו נשך ותרבית כאלו היה מלות הגוי ממש ולא זכרו הפסק האמיתי דיש שליחות לגוי להחמיר אנחנו מסכימי' וגוזרי' שכל משכון מישראל מג פר' [פרחים] ולמעלה שימצא ביד ישראל אחר אפי' ע"י גוי יתחייב הלוה לפרוע הרבית לגמרי והסך ההוא ינתן לצדקה לעניים.

ולהיות המכשלה הזאת תחת יד ישראל הלווה בעברו גם הוא על לא תשיך (דברים כ"ג. כ.) ועל ולפני עור לא תתן מכשול (ויקרא י"ט. י"ד.) למען יהיה החוטא נענש הסכמנו שהלווה ההוא יתחייב לפרוע לקופת

הצדקה ב' דוקא' על כל פעם ופעם מלבד הרבית שעלה על המשכון שיתחלק לעניים ג"כ כנזכר למעלה.

TRANSLATION

Whereas we are forbidden to receive any usury from our fellow-Jews and our Rabbis have as a hedge about the law made many additional prohibitions forbidding what is called the "dust" [1] of usury, and whereas in our own times the number of those who disobey the law and lend one another large sums without observing the ways and methods which are provided for legal business transactions,[2] has increased and whereas they add sin to iniquity by nominally including the usury in the loan;

Therefore do we ordain that every person shall beware of such action.

In order that our hands may be clean from iniquity we have ordained that if any man include usury as nominally part of the loan he makes his neighbor, or if any person will lend money to his neighbor at usury, without observing the ordinances and methods laid down by the Sages, then the liability of the debtor for the usury shall be void, and the creditor shall be able to collect only the amount actually loaned.

But whereas many of our generation are given to this sin, and they act in darkness, so that the sin is known only to the debtor and the creditor, therefore have we ordained as a hedge about the law, that any debtor shall have the power to compel the creditor to take an oath that the alleged loan does not consist in part of usury. If the creditor refuse to take the oath, the word of the debtor shall be accepted and he shall not be liable for the usury.

And whereas it is the law of our Torah that a Gentile cannot act as an agent for a Jew, the custom has developed for one Jew to send pledges to another Jew through

[1] See *Shulhan Aruk Yoreh Deah*, 161.

[2] The conditions under which a loan may be made at interest are referred to on page 234, section 1. See there note 1. See also *Yoreh Deah*, 167.

a Gentile, while the borrower stands by, and acts as though it were in fact a loan to the Gentile.[1] But they have forgotten that the principle of the inability of a Gentile to act as agent for a Jew does not apply to cases where it would make for leniency in ritual law. Therefore do we ordain that if in any case a pledge of the value of three florins or more given by a Jew is found in the hands of his fellow, even though it should have been given through the medium of a Gentile, the debtor shall pay the full amount of the usury, but it shall be given to the charity fund for the poor. And in view of the fact that the sin lies at the door of the debtor as well as of the creditor, since it is forbidden to pay usury just as it is forbidden to accept it,[2] and in order to punish the sinful one, we have ordained that the debtor in such case as that described above shall pay to the charity fund, two ducats for each transgression besides the interest on the debt which must be given to the poor.

D

TAKKANOT OF 1554

The following Takkanot were first printed in *Ibri Anoki*, 1879, numbers 29–30, by Isaac Baruch Ha-Levi. In no. 31 of the magazine for that year, there appeared a letter from Halberstam giving some variants to the text of the Takkanot from a manuscript of his, and adding from the same manuscript, the text of an attack on the ordinances by one Moses Basula. At the same time Halberstam added some very scholarly information concerning the members of the synod. The whole text with the additions by Halberstam was reprinted as a separate pamphlet under the title *Takkanot Hakamim*.

Another text of the Takkanot is to be found under the

[1] See *Baba Mezia* 71b, and *Tosafot ad loc.* where it is stated definitely to have been the view of R. Tam that the practice was permitted. But see the other authorities who differ with him *Yoreh Deah* 169.

[2] *Mishna Baba Mezia* chapter V, end.

letter *Tau* in Samuel Lamperonti's *Pahad Yizhak*. The part containing this letter, i.e., the last volume, appeared in 1887 (Berlin); the Takkanot being found on f. 155a.

The text printed below is taken from a manuscript of the responsa collection מערבי נחל by R. Yehiel Traboto, now in the library of the Jewish Theological Seminary of America. The main text of the Takkanot is found on fol. 383a *seq.* of the volume, but the first section is cited in the marginal notes of the famous scholar, Abraham Joseph Solomon Graciano, to section 178 of the book (fol. 350b).

The variants from Graciano are marked א; those from Isaac Baruch Ha-Levi ב, and those from the *Pahad Yizhak* ג.

TEXT

אלו הם התקנות שתקנו אנחנו ח"מ היום יום ה'[1] כ"א תמוז שהוא כ"א יוניו שיד לפ"ק פה פירארא בוועד כללי כלנו המורשים בהסכמה אחת בשם קהלותינו הקדושות י"ר שתשרה שכינה במעשה ידינו וחפצו בידינו יצלח אמן.

ראשונה: שלא יוכלו בעלי הדפוס להדפיס שום ספר שלא נדפס מעולם כי אם ברשות ובהסכמת שלשה רבנים סמוכים משלשה רבנים ועם הסכמת ראשי[2] אחת הקהלות הקדושות הסמוכות אל מקום הדפוס אם יהיה הדפוס[3] בעיר קטנה ואם יהיה בעיר גדולה אז תספיק ההסכמה מראשי הקהלה ההיא עם הג' רבנים סמוכים כנ"ל ויהיה רשום[4] בהקדמת הספר שמות הרבנים וראשי הקהלה ההיא וזולת זה לא יוכל שום אחד מישראל לקנות הספר ההוא בקנס עשרים וחמשה סקוד"י לכל אחד מהקונים הספר ההוא וילכו הכ"ה סקודי[5] הנ"ל לקופת הצדקה ממקום הממרה.

ב.) מי שהפר ברית תחלה והעמיד ישראל חבירו בערכאות של גוים בלי רשות קהלו או הרב של עירו וישוב וניחם[6] המפר ברית הנ"ל ויבקש אח"ך להעמיד חבירו בד"י לא יאבה לו ולא ישמע אליו שום רב או קהל להכריח את חבירו הנ"ל להעמידו בדיני ישראל.

ג.) שלא[7] יוכל שום אדם לכתוב פסק בדיני ממונות אפילו על דרך

1 ג. יום א'.
2 א. ל'.
3 ג. הדפוס ל'.
4 (למעלה מן השורה) ויהיו רשומים (ועל הגליון) ויהיה רשום בהקדמת הספר כל שם ושם מהרבנים.
5 ב. סקודי זהב.
6 ב. ויחם.
7 ב. לא.

ראובן ושמעון רק ברצון שני הבעלי דינין או הדיינים שיבררו החלקים או השליש.

ד.) במקום שידור בו רב אחד לא יוכל רב אחר מחוץ לעיר ההיא[1] לכתוב שם גזירות אם לא יהיה ברצון הרב מהעיר או שהרב ההוא יסתלק מן הדין ההוא בכתב או בפני עדים ובמקום שיש רב הממונה[2] מהקהל או מראשי הקהל לא יוכל רב אחר אפי' מהעיר ההיא לעשות שום גזרה לא בכתב ולא בעל פה רק ברצון הרב[3] מהקהל הנ"ל ואם יגזור גזירתו תהיה בטילא מעיקרה וכשיהיה לאיש אחר דין ודברים עם הרב מהעיר אז יוכלו רבנים אחרים למזר עליו כאשר יראה בעיניהם.

ה.) בהיות שנמצאו אנשים עוברים על תקנת רבנו גרשון בחזקת הבתים וסומכין שכל זמן שבעל הבית מכר את הבית ההוא שדר בו היהודי שחזקתו בטלה ע"כ אנחנו מסכימים ונוזרים שאע"פ שהגוי מכר ביתו לא פקע זכותיה מהיהודי הראשון וחזקתו במקומה עומדת והעובר על זה עובר על חרם תקנת ר"ג ועל תקנתנו זאת אך בדבר תקנת חזקת ההלואה בריבית תתבאר מעבר לדף.

ו.) בהיות שנמצאו אנשים הסומכים על מי שפסק שכאשר האדם עמד עם אשתו עשר שנים ולא קיים פריה ורביה שיוכל לקחת אשה אחרת ולא יחוש לתקנת ר"ג ע"כ אנחנו מסכימים ונוזרים שכאשר יהיה לו בן או בת גם כי לא יצא ידי חובת פריה ורביה לא יוכל לקחת אשה אחרת רק בהסכמת ורצון אשתו ואחד מקרוביה שיסכימו לזה.[4]

ז.) עוד הסכמנו ונזרנו שכל מי שיעיז פניו לקדש אשה אחת נערה שלא יהיה בעשרה בלי רשות אביה ואמה אם יש לה אב ואם או בלי רשות שנים מקרוביה היותר קרובים אליה כשאין לה אב[5] יהיה מנודה ומוחרם המקדש וגם העדים המעידים על הקידושין ההם היינו שנתייחדו לעדות ההיא והכל שריר וקיים.

נמניתי בחבורה זו אני מאיר בכמ"ר יצחק ז"ל קצנאילנבוגן מורשה ממדינת ווינציאה

אני יהודה בכמהר"ר שבתי ז"ל מורשה מק"ק רומה
נמניתי בחבורה זו משה מריאטי יצ"ו מורשה ק"ק בולונייא
וגם אני ברוך עזיאל בן לא"א כמ"ר ברוך חזקיטו זצ"ל מסכים לכל הנ"ל
ואני יעקב דאינה בן הגאון כמהר"ר עזריאל זצ"ל מסכים לכל הנ"ל
גם אני יצחק יצ"ו בכמה"ר עמנואל מנורצי זלה"ה מסכים לכל הנ"ל
הצעיר אלחנן בכמ"ר יצחק מפאנו זצ"ל פה פירארא
הצעיר שמואל פינצי יצ"ו בכמ"ר מצליח פינצי זלה"ה

1 ב. ההיא ל'.
2 ב. ד. ממונה.
3 ג. הרב ל'.
4 ב. ד. בפני עדים כשרים.
5 ב. ואם.

יצחק כהן מפורטו מורשה מנטובה
יעקב בכמ"ר מאיר סלם ז"ל מורשה ק"ק מנטובה
אני יצחק פואה א' ממורשי ק"ק ראיגין[1] ומודינא
הצעיר בנימין יצ"ו בכמ"ר מנחם מראוינה זלה"ה
הצעיר אליהו בכמ"ר שלמה קורקוס ממורשי ק"ק רומה
הצעיר יצחק בן לא"א דון יוסף[2] אבראבאנילו

עוד אנו מסכימים ונזהרים ששום אדם לא יעז פניו[3] להכנס בחזקת חברו בלי רשות[4] להלוות ברבית במקום שיש לבעל החזקה תנאי עם אדוני העיר שלא יוכל שום אדם להלוות בריבית בלי רשותו בכל תקף גזירות וחומרות גזרו הגאונים מויניציאה פאדובה ובולונייא ואחרים כנראה פה למטה אך היהודים מעיר רומה ובולונייא לא היו[5] נכללים בתקנה זו מחזקת ההלואה ברבית בעבור שאין להם התנאי הנ"ל וכל הרבנים שיבאו מהדש גם המה אחר חתימתנו לקיים את כל תקף התקנות הנ"ל תבא עליהם ברכת טוב ושלום לרבנן ולכל תלמידיהון ולכל ישראל אמן[6]

מאיר בכמ"ר יצחק קצנאילנבוגן זצ"ל[7]
יהודה בכמה"ר שבתי ז"ל
הצעיר שמואל פינצי יצ"ו מורשה קהלות רומנייא
משה מריאטי מורשה ק"ק בולונייא
ברוך עזיאל בן לא"א כמ"ר ברוך חזקיטו ז"ל
יצחק יצ"ו בכמ"ר עמנואל[8] זלהה מנורצי
יצחק בן לא"א דון שמואל[9] אבראבאנילו
יעקב דאינה[10] בן הגאון כמוהר"ר עזריאל זצ"ל
יצחק כהן מפורטו
יצחק יצ"ו בכמ"ר וורדימוס[11] א' ממורשי ק"ק ראטנוי[12] ומודינא
יעקב בכמ"ר מאיר סלם י"ל מורשה ק"ק מנטובה
הצעיר אלחנן בכמ"ר יצחק זצ"ל מפאנו פה פירארא
הצעיר בנימין יצ"ו בכמ"ר מנחם מראוינה זלה"ה
הצעיר אליהו ברבי שלמה קורקוס ז"ל ממורשי ק"ק רומה

1 ב. רייו. נ. ריניי"ן.
2 נ. (למעלה מן השטה) שמואל. ב. דוד יוסף אברבנאל.
3 ב. נ. פניו ל'.
4 ב. נ. רשותו.
5 ב. נ. יהיו.
6 ב. נ. והכל שריר וקיים.
7 ב. נ. זצ"ל ל'.
8 ב. נ. זלה"ה ל'.
9 ב. נ. יוסף אברבנאל.
10 ב. נ. בן הגאון כמוהר"ר עזריאל זצ"ל ל'.
11 ב. יצ"ו בכמ"ר וורדימוס ל'. נ. בכ"מ ורדימס זלה"ה.
12 ד. ריניין.

TRANSLATION

These ordinances have been decreed by us on Thursday, the twenty-first of Tammuz, corresponding to the twenty-first of June, of the year 5314 (1554) here at Ferrara.

1. Printers shall not be permitted to print any hitherto unpublished book except with permission of three duly ordained Rabbis, and the consent of the heads of one of the communities nearest the place of printing, if the city in which the book is printed is a small one. If it is a large city, the agreement of the heads of that Community shall suffice provided the consent of three ordained Rabbis is obtained as said above. The names of the Rabbis and the heads of the Communities sponsoring the book shall be printed at the beginning of the volume. Otherwise no one shall be permitted to buy the book under penalty of a fine of twenty-five *scuti*. The fine shall be given to the charity fund of the city of the transgressor. [1]

2. If any person compel his neighbor to defend a litigation before a secular court without the permission of his community or the rabbi of his city, he may not thereafter bring the matter before the Jewish courts, and no Rabbi or Community shall issue a summons to compel the defendant to appear before them. [2]

3. No person shall render a decision in any litigation, even without referring specifically to the parties concerned, unless asked to give his decision by both parties or the judges chosen by them or an arbitrator. [3]

4. No Rabbi shall issue any order or decree to any inhabitant of a city which has another Rabbi unless the local Rabbi agrees or declares in the presence of witnesses or in writing his unwillingness to interfere in the litigation.

[1] See Bruell, *Jahrbuecher*, 8, 60, note and Res. R. Meir of Padua, no. 40. Compare also above chapter VIII, section 12, p. 263.

[2] Compare the more severe ordinance of R. Tam, above Chapter IV Text A: and also the Takkanot of Candia, Chapter IX, section 4, where the right to take a litigation before Gentile Courts, seems to be recognized.

[3] Compare the Takkanah made by the synod convened under R. Hayyim Or Zarua, see part I, page 72.

In a city where there is a Rabbi appointed by the Community or by the Heads of the Community, no other Rabbi even of the same city may issue any order. If any order is issued contrary to this ordinance it shall be void. If, however, one of the members of the community has a litigation against the Rabbi of the Community, other Rabbis may issue such decrees as they think proper in the case.

5. In view of the fact that there are some who transgress the ordinance of R. Gershom against renting houses of Gentiles from which previous Jewish tenants have been expelled,[1] because they assume that after the original owner of the house has sold it to another, the prohibition no longer holds, therefore do we decree, that even though the original Gentile owner sells the house, the rights of the original Jewish tenant do not disappear, and that he who rents the house in such a case transgresses the *herem* of R. Gershom and our own *herem*. (The ordinance regarding lending money at interest in places where another Jew has had sole rights, will be found below).

6. Some persons have accepted the decision of the authority who permits a man whose wife has not given birth to *both* a son and a daughter within ten years after their marriage to marry a second wife without the consent of the first, in spite of the ordinance of R. Gershom against bigamy.[2] We, therefore, ordain, that if there is *either* a son or a daughter born to a man, he may not marry a second wife except with the consent of the wife and one of her relatives.

7. We have further decreed that if anyone gives *Kiddushin* to (betroths) a woman without the presence of ten people[3] unless it be with the consent of her father and mother if they are alive, or her two nearest relatives if

[1] See above Chapter V, the Takkanot of R. Tam, and compare Part I, p. 31.

[2] See Part I, page 26b, and also Part II, chapter II, section 1.

[3] Compare below Chapter XIII, section 3, page 364.

she has no father, both he and the witnesses to the marriages shall be excommunicated.

(Addendum) We have further decreed that no one shall be permitted to lend any money at interest in where cities contracts have been made with another Jew giving him the sole right to lend money at interest. The Jew of Rome and Bologna are not included under this section of the ordinance, since there is no contract made with the masters of those cities.

E

The following text is taken from fol. 332a of the responsa collection מערבי נחל mentioned in connection with the preceding text (above, p. 301). It appears to be a re-enactment in the year 1610 of the ordinances against compulsory *Kiddushin*. This is of course what is meant by forbidding the performance of *Kiddushin* except in the presence of ten Israelites of whom two must be relatives of the bride.

Most interestingly it refers to "a general synod at Ferrara in the year 1555" where such an ordinance had been established through the influence of that scholar, "the Gaon, R. Judah Mintz." Now we have seen from the preceding text that the synod at Ferrara actually was held in the year 5314, i.e., 1554. R. Judah Mintz was very active in connection with that synod, being the first signatory to the ordinance. The ordinance adopted at that time contains a provision against the performance of the *Kiddushin* except in the presence of ten people except with the permission of the bride's parents or two relatives if she be an orphan. The re-enactment of 1610, indeed contains much more stringent rules. It requires the presence of ten Israelites, of whom two must be blood-relations of the bride. Furthermore it declares *Kiddushin* performed in violation of the ordinance null and void.

It is therefore improbable that the word שט"ו is a mistake for ש"ד, and that the synod of 1554 is referred to. Yet that is not quite impossible since it was not unusual to change a Takkanah somewhat when it was re-enacted. Nevertheless it seems more likely that besides the synod of 1554, there was held another, again at Ferrara in 1555,

where the ordinances of the previous year were in part or in whole re-established. We may venture the hypothesis that the attack of Basula on the ordinances of the year 1554 led to a re-convening of the conference. But the whole matter must remain indefinite until further manuscript material is made available.

TEXT

למען תהא גזירתנו זאת מועילה לשעה ולדורות אנו מחדשים ממלכת הגזירה גזרו הקהלות י"צ בוועד כללי בק"ק פירארא בשנת שט"ו ואשר כבר עשו בני ק"ק פדואה ובני הישיבה שמה שנת רסו ע"י ארי אחד אותו הגאון מהרר"ר יהודה מינץ ז"ל ואשר גזרו מקודם ראשונים אשר לבם כפתחו של היכל הרשב"א ז"ל בסימן אלף ר"י בתשובותיו ופוסקים אחרים ומבארים אנו וגוזרים בגזירת נח"ש [נדוי חרם ושמתא] שלא יהא שום איש מבני ישראל שיקדש אשה לא בעולה ולא גרושה אלא א"כ יהא מרעתה ובפני עשרה מישראל ומהם שנים מקרוב[י] האשה קורבת בשר ובכלל גזירה זו גם העדים וכל המועלים בדבר ואם ח"ו ובר מנן יארע שיהיה איזה פורץ גדר זה אם בידינו יכולת זה מעתה ומעכשו אנו מפקיעין החפץ אשר יקדשו בו לכולי עלמא ויאסר על המקדש באופן שקדושיו יהיו מופקעים ואי קדיש בביאה משווינן לבעילתו בעילת זנות וגזירה זו תתפשט בכל ארץ מונפירטו בלבד ועל כל איש נכרי שיבא לדור בארץ הלזו דירת קבע או ארעי ואפילו כל שהוא והעובר על גזרתינו זאת לא יהיה לו היתר עולמית אם לא ע"י עשרה חכמים היושבים על כסא ההוראה משלשה ארצות שלשים יום רצופות למען יהא פרסום לגזירתנו זאת ויושלח לנו אליהו ז"ל לשום שלום בעולם ככתוב והשיב לב אבות על בנים ולב בנים על אבותם (מלאכי ג, כד) אמן (מי שיסיר גזירתנו מכתל ב"ה יפול בקנס עשרה סקודי זהב חציים לפרנס עניי גויים א"ל"ה מיזיריקורדיא"ה וחצים לפרנס עניי ישראל).

פה קסלי יום ה' סוף איר ש'ל'מ'ה' לפ"ק.

נתנאל בכמ"ר שבתאי ממשפחת הדני ז"ל דיין ומסדר ופוסק על כל הנ"ל

שמואל נקרא זנוויל פיטקרול מסדר ופוסק ומסכים לגזירת הגאון נתנאל יצ"ו הנ"ל

דוד בכמ"ר אליעזר י"ץ מראווינאה מסדר ומסכים לגזירת הגאונים הנ"ל

חיים בן החר"ר אליעזר סגן לויה י"ץ מסדר ומסכים לגזירת שני הגאונים הנ"ל.

אמת הוא שבזמן הנ"ל (?) הסכמת לגזירה הנ"ל עם החתומים הנ"ל וחזר אני לפרסם אותה מחדש ברשות מעלת אדונינו הדוכוס יר"ה

נאום דוד שמואל בכמ"ר קלונימוס פיטקרול י"צ נ"י

דברי האלוף מהר"ר זנוויל הנ"ל אינם צריכין חזוק אך כיהודה ועוד לקרא באתי להעיד איך בזמן הנ"ל הסכמתי גם אני לדעת המורים הנ"ל

בגזירה הנ"ל נאם חיים ב' הח"ר אליעזר סנ"ל י"ץ התפרסם מחדש הגזירה הזאת ברשות מעלת אדונינו הדוכוס יר"ה היום יום ה' כ"ד סיון שלם לפ"ק פה קסלי מנפיראטו.

Translation.

In order that this Takkanah may be in force both for the present time and for future generations we are renewing the decree which was established by the communities in the general synod at Ferrara in the year 5315 (1555), an ordinance which had previously been established by the community of Padua and the members of the academy (?) which is there situated in the year 5266 (1406), through the efforts of the great scholar, R. Judah Mintz, and indeed was in earlier times ordained by such scholars as R. Solomon ibn Adret, in his responsum, no. 1210, and by other codifiers. We are explaining and ordaining under the *herem*, *niddui* and *shamta*, that no Israelite shall give *Kiddushin* to any woman, whether a virgin or a divorcee, unless it be with her consent, and in the presence of ten Israelites, two of whom must be blood-relatives of the bride. The decree applies not only to the bridegroom, but to the witnesses and all those who take part in the performance of the ceremony.

As to anyone who may transgress this ordinance, we now declare the gift which he used as *Kiddushin* public property and its use is forbidden to the one attempting to offer it as *Kiddushin* in such a way that the *Kiddushin* shall not be valid. If the *Kiddushin* took the form of marital relations, we now declare those relations to have been out of wedlock.

This decree shall apply to the district of Montferrat alone, and to such newcomers as may settle there permanently or temporarily.

Transgressors of his decree shall be released from the *herem* only after thirty days by consent of ten scholars who are acting as authorized rabbis living in three countries

[1] See Responsa of Ibn Adret, ed. Bologna, 1539.

[2] This seems the most likely interpetation of the paragraph. It is hardly possible that the thirty days period refers to the rabbinate of the scholars.

(provinces?), in order that this decree may be made known, and that Elijah may be sent to us to bring peace into the world as it is written, "He shall bring back the heart of fathers to their children, and the heart of children to their fathers."[1] Amen.

(Whoever[2] removes this decree from the wall of the synagogue shall be fined ten gold scuti, half to be given to the Gentile poor as an act of mercy, and half to the Jewish poor).

Here at Casale, Thursday, the end of the month of Iyyar, 5370 A. M. (1610).

Nathanel b. Shabbetai of the family of Dan, a judge agreeing to all the above.

Samuel, called Zanvil, Petacrol, agreeing to the decree of the scholar, E. Nathanel.

David b. Eliezer of Ravenna, agreeing to the decree of the foregoing scholars.

It is true at that time I agreed to the above decree together with the other signatories, and now I again publicly announce it by permission of our lord, the Duke.

David Samuel b. Kalonymos Petacrol.

The words of the scholar, R. Zanvil, require no confirmation but merely as a matter of form I wish to state that I also agreed with the opinions of the teachers just mentioned in regard to the decree.

Hayyim b. Eliezer the Levite.

The decree was announced anew by permission of our lord, the Duke, today, Thursday, the twenty-fourth of Sivan, of the year 5370 (1610), here at Casale, Montferrat.

F

The following is not the enactment of a synod, but it is a Takkanah made in several communities by correspondence. It is found in a manuscript of the Jewish

[1] Malachi 3.24.

[2] This seems to be an additional note added to the copy of the decree that was placed on the wall of the synagogue.

Theological Seminary on a folio leaf bound up with other Italian Hebrew documents. It was first established by the community of Cremona, and then accepted by that of Venice, and finally by that of Rome. Apparently it was then sent to all the smaller communities for confirmation. Somewhat similarly, we notice the confirmation of the Takkanah of 1418 by the representatives of the community of Forli (see above p. 288). Since we have the original text of the Takkanah we can also notice the manner of promulgation which was the announcement at the Sabbath services. This method was also used in Castile (see p. 372) and in Morocco (*Kerem Hemer* II.15). It was in all likelihood the method in common use in the other countries although there is no evidence available in regard to them.

TEXT

ב"ה

שמעו דבר ה' החרדים אל דברו
הטו אזנכם אזן ששמעה בסיני
שומעת תוכחת חיים
שמעו ותחי נפשכם

היום רבו המתפרצים לרשת משכנות לא למו בחזקת הלואה רמה ידם בחזקת היד להשיג גבול וחזקת ראשונים אשר עמלו בה וישבו בה לפנים. מעמיקים עצם שמים במחשך מעשיהם באמצעות אדוני ארץ ינקטו בכובסיה דההוא גברא בעל החזקה עד דישבוק לגלימיה עד כי יעזבו החזקות ההם וצדיקים בדין זה מגורשים מבית תענוגיהם ויבואו רשעים תחתם ולא יראו ולא יביטו למעלה ולתורתו המפסקת ואומרת ארור, משיג גבול רעהו ועם כי דבר דיוטגמאות ישנות כמה דיו נשפך וכמה קולמוסים נשברו מקמאי וקמאי דקמאי אשר עמדו בפרץ על דבר זה. ואצל הרשעים האלו כבר ישכחו ולא ישיתו לבם לכם ויען כי קול דמעת העשוקים נשמע בכמה מקומות באיטליאה ובפרט כעת בעלי החזקות ההם בדמם ודמם ממש ועתה חדשים מקרוב יבאו וברשע וזרוע יגזלו מקומם ובאולי החכמים שלמים וכן רבים אשר סביבות החלל ידפסו אסורות ולנחשומים [צ"ל ולנחושתים] הובאו ולא יוכלו להציל עני מיד חזק ממנו בכן לשבר מלתעות עול ולקטע רגליהון דרשיעיא גוזרים אנחנו בגזרת נח"ש על כל איש ואשה זקן ונער שלא יטפל מטוב עד רע להשיג שום חזקה להלות בריוח מא"ת אדוני הארץ מקום אשר כבר קדם להחזיק בו איש עברי אחר או אשה עבריה להלוות שמה ואם עד היה פעל

ועשה איזו פעולה או מעשה בעשק השגת שום חזקה הנ"ל גוזרים אנחנו בגזרת נח"ש שלא ישתתפו ולא יהנה בהשגה ההיא שום הנאה בעולם לא הוא ולא יורשיו ולא באי כחו ולא שום אדם שבעולם הן מבני המדינה ההיא הן מחוצה לה עד ירדו לפני דיני ישראל במקום בית דין הסמוך וממוצע להם ויעשו ככל אשר יושת עליהם על פי דיני ישראל ואם באולי יהיה איזה רשע רע אשר יתברך בלבו לאמר שלום יהיה לי ולא ישית לב לגזרתנו זאת כבר משפטו חרוץ אשר הנח"ש תשופנו עקב יהא ארור בו נדוי בו שמת' החמורה שבשמתות ורבצה בו כל הקללה הכתובה בספר התורה ונוסף על אלה גוזרים אנחנו בגזרת התורה ובכל חומר הנ"ל על כן בן ובת ישראל יסורו מעל אהלי אנשים הרשעים האלו לבלתי ישתתפו עם שום אחד מהם בהחזקה הנ"ל ושלא לשכור ושלא לחכור ושלא לקנות משום אחד מהם החזקה הנ"ל כנ"ל לא בכולה ולא במקצתה ושלא לעשות עם שום אחד מהם שום קונטראטו שבעולם בהחזקה הנ"ל כנ"ל ושלא להטפל עמו מטוב עד רע אפילו לישב בתוך ארבע אמות שלו וגזירתינו זאת על דעת המקום ברוך הוא ועל דעת כל חכמי ישראל באופן שלא יועיל לחרוך רמיה צידו שום ערמה או מרמה והעושה הרע לא ינקה מגזירתנו זאת עד אם יתקן את אשר עוות בדבר חזקת ההלואה בהושב בעל החזקה על חזקתו ובשלם לו נזקו על פי דייני ישראל ומוסף על אלה יחוייב לבא לפני שני חכמי ישראל המוסמכים להוראה ולקבל תשובה מהם כפי אשר יורוהו ותמיד אנחנו וכל ישראל יהיו נקיים יפרו וירבו בשובע שמחות בראות ביאת הגואל אכי"ר.

נתקנה פה קרימונא יום ד' כ' כסלו ט"ו נובימבר שמב לפ"ק בתנאי שלא יהיה נגד המלכות יר"ה.

נאם יצחק המכונה זעלקימן ב"ר גרשם חפץ זצ"ל
ונאם הק' דוד בכ"ר אהרן ז"ל נוירלנגן
ונאם אפרים בכ"ר מנחם ז"ל נורולנגן
ונאם אברהם מנחם פורט הכהן
משה מנחם כהן רמא מסכים לכל הנ"ל

אחת היא כי גזירת האלופים הנ"ל פרסמתי בשלושה בתי כנסיות מהק"ק קרימונה נאם אדוניה ב"ר יעקב זצלה"ה הי"ד שמש ק"ק קרימונה.

יפה גזרו מעלות החכמים השלמים הנ"ל ויקרא שמנו עם מעלותם בכל חומר ותוקף הגזירה הנ"ל.

ויניציאה יום הששי כ' טבת השמ"ב ליצירה.

נאם יודא קצנאילנבוגן
יעקב בכ"ר אברהם שלמה הכהן זצ"ל
אביגדור ציוידאל

אחת היא שנתפרסמה הגזירה הנ"ל בכל בתי כנסיות מהויניציאה נמבור יר"ה על ידי החתום מטה על פי הסדר וגם מנדאטו מע' האדו' כן נדבק הטופס ממנה בהצר הגיטו במקום הנהוג נאם אברהם בכ"ר אורי זצ"ל שמש ק"ק ויניציאה הכותב וחותם היום יום ד' כ"ה טבת שמ"ב לפ"ק.

מי ראה את אלה יוצאים ולא יצא לעזרת השם בגבורים ולכבוד תורתו הקדושה נגד הפריצים הפורצים גדר ויבקשו לשלוח יד להפר ברית אלקינו לכן אני בכל כחי נוחר ומקיים הגזירה הנ"ל ומסכים עם מעלות האלופים המחזיקים את הבדק הדת

וזה ישמע שלא יהיה נגד המלכות יר"ה

זעירא דמן חבריא יצחק בכמוהר"ר יהודה מליפיטיל זצ"ל משרת ק"ק רומא יצ"ו י"ז יינארו השמ"ב.

אחת היא שנוספרסמה הגזירה הנ"ל בכל בתי כנסיות מק"ק רומא יצ"א ביום שבת בשעת התפלה על יד השליח מהקהל עם המוניט"וריאו ממעלת החצר כנהוג.

כ' יינארו שמ"ב לפ"ק יצחק מליפייטיל הנ"ל

גם אני מעיד נאמנה שנתפרסמה הגזירה הזאת פה רומא בכל בתי כנסיות ביום ש"ק הנ"ל נאום הצעיר

בן ציון יצ"ו מנורצי

הדור אתם ראו דברי חכמים כדרבונות ובמסמרות נטועים כנתינתן מסיני והבינו כונתם הכוללת והפרטים להיות כל איש שורר בביתו ובחזקתו ונכרים לא יבאו שעריו רק כל איש על מקומו יבא בשלום.

TRANSLATION

In view of the fact that many interfere the vested rights of their neighbors to have sole privilege of lending money at interest in certain localities, and very often the agency of the non-Jewish nobility is employed to compel the owner of the privileges to surrender them, and those who have the law on their side find themselves driven from their positions and the wicked displacing them and no one looks to God or to his Torah, which forbids such practices, in spite of the fact that many of our predecessors have protested against the unfairness of the practice, and whereas the cry of the oppressed of various places, especially among the owners of these exclusive rights of money lending, has reached us, and whereas it is to be feared that the protest of the local Rabbis against the unfairness and the injustice will be without avail, and they may even be cast into prison, therefore have we decided:

That no Jew or Jewess shall interfere with the exclusive rights of moneylending that is at present possessed by any other Jew;

That if anyone has already made an attempt to secure for himself the rights that in fact belong to a fellow-Jew, he shall be forbidden to make use of the transfer of the rights nor shall any heir of his or anyone who rights are derived from such an unjust person make use of them, until the matter is decided by a Jewish court;

That if anyone shall violate these ordinances he shall be excommunicated, and no one shall trade with him, either taking part in the rights enjoyed by him or hiring it in whole or in part nor make any contract with him regarding the *Hazakah*, or have any dealings with him at all, even so far as to sit in his company;

This ordinance of ours shall not be set aside until the guilty one sees that the rightful owner of the exclusive rights is re-instated in them, and is compensated for his loss. Moreover the transgressor shall present himself before two ordained Rabbis to receive such penance as they may direct him to undertake.

Ordained here at Cremona, on Wednesday, the fourth of *Kislev*, the fifteenth of November, of the year 5342 (1582), on condition that the ordinance is not opposed to the government.

Isaac, called Zelkimann b. Gershom
Aaron David b. Aaron Noirlingen
Ephraim b. Menahem Noirlingen
Abraham Menahem Port Ha-Kohen
Moses Menahem Kohen.

The ordinance of the above-mentioned leaders, has been announced by men in the three synagogues of Cremona.

The decree of the Sages of Cremona is proper and we second their decisions.

Venice, twentieth of *Tebet*, 5342.
Judah Katzenellenbogen
Jacob b. Abraham Solomon Ha-Kohen
Abigdor Cividal

The ordinance was announced in all the synagogues of Venice by the undersigned, according to the command

of his highness Gambur, and a copy of it was placed on the gate of the Ghetto in the usual place, Abraham b. Uri, the *Shamash* of the Community of Venice, who has written and signed this on Wednesday the twenty-fifth of *Tebet*, 5342.

I, too, agree with all that has been written above.
Isaac b. Judah, minister to the Community of Rome.

The above ordinance was announced in all the synagogues at Rome on Sabbath during the prayers, by the agent of the community with the permission of the Court, as usual. Isaac of Lifatil.

I also testify that it was announced at the Community of Rome. Ben Zion of Norzi.

G

The following Takkanah of the Community of Pesaro is taken from the marginal notes of R. Abraham Joseph Solomon Graciano to a Ms. of the responsa מערבי נחל in the library of the Jewish Theological Seminary of America, (concerning which see p. 301). It is of interest as bringing further evidence of the leniency with which the Rabbis of Italy saw Jewish litigations taken before Gentile courts, and because it deals with an aspect of the matter not touched upon in the other ordinances. Although it is only a local Takkanah, its intrinsic interest seems to justify its inclusion here.

TEXT

והא לך טופס והעתק הסכמת הרבנים מפיסארו הנ"ל אות באות מלה במלה ו"ל בבית ישראל ראינו שערוריה פה פיסארו כי יריבון אנשים ונגשו אל המשפט בערכאות שלהם ישפטום ואם יטילו השופטים שבועה על א' מהם המשביע לחבירו ילך ויביא במקום המשפט שלהם חפץ של מצוה כגון תפלין או אחד מספרי הקדש להשביע בו את חבירו ומפני שהם לא ידעו את ערך הקדושה אשר בתפלין הרואה אותם מזלזל בהם והרצועות שבהם ידמו בעיניהם כאלו יהיו שרוך נעל או כף הקלע, ניזלזלו בהם ונמצא שם שמים מתחלל ח"ו לכן אנחנו משרתי הקהלות הקדושות אשר פה פיסארו הבאים על החתום כדי לגדור גדר קמנו ונתעודד ובהסכמת הקהלות הקדושות יצ"ו הנ"ל גזרנו שלא יוכל שום [אחד] מבני ישראל להשביע את חברו בערכאות

שלהם בחפץ של מצוה רק ישביענו על הקולמוס כמשפטם ואם לא יתקרר דעתו להשביעו על הקולמוס יבאו בעלי הריב לפני אחד תופשי התורה וישבע הנשבע בפנינו בנקטו חפץ של מצוה ודבר זה יהיה לחק על כל הקהלות הקדושות אשר פה פיסארו והעובר על תקנה זו יהיה כאלו עובר על הסכמת הקהל ונושא עונו והירא את דבר ה' יהיה כאזרח רענן ובצל שדי יתלונן נכתב ונחתם פה פיסארו כ"ו אב שהוא ג' אגוסטו שמ"ד לפק והכל שריר וקים.

לא נקבע שם מעלות הרבנים מיסדי ההסכמה והתקנה הנ"ל אשר היו מקומם בה יען לא מצאנו שמותם בהעתק ההסכמה הנ"ל.

TRANSLATION

We have noticed a disgraceful procedure that is common here at Pesaro, namely that when two Jews have a litigation they proceed to take their case before the secular courts and if one is required to take an oath, an object of religious ceremonial, like the *Tephilin*, or one of the books of Scripture is brought to the Court so that the oath may be taken over it. Since the Gentiles do not realize the holiness which is attached to the *Tephilin*, they look upon them with contempt, and consider the straps of the *Tephilin* as of no more account than shoe-laces, and thus the Name is profaned. Therefore have we, the Ministers of the holy Communities, here at Pesaro, ordained, with the consent of all the Communities, that no Jew shall be permitted to take any article of religious ceremonial to a secular court for the purpose of administering an oath, but the oath shall be taken over the pen. If the litigant is not satisfied with such an oath, the parties shall come before a Jewish judge for the administration of the oath. Whoever transgresses this ordinance shall be considered as having transgressed a communal ordinance, and shall be punished.

Written and signed, here at Pesaro, the twenty-sixth of *Ab*, which is the third of August of the year 5344 (1484).

CHAPTER XI

TAKKANOT OF CORFU

The following Takkanot are taken fron the fly-leaves of a manuscript of a *Mahzor Corfu* in the library of the Jewish Theological Seminary of America. In spite of the many lacunae, it is not difficult to gain a clear idea of the twelve provisions of the original ordinance.

.....אמת ומטעיה אמת נאמנו מאד אשר בימי קדם
.....[ה]סכימו הסכמה תמימה וישרה שהמשודך לא יתחבר עם ארו[סתו]
ושלא ילך [לביתה] וכן המשודכת לא תלך לבית המשודך כדי שלא יבאו
.....חכמינו ז"ל הרחק מן הכיעור ומן הדומה לו (חולין מ"ד ב')
ובהמשך הזמן בלתי נאמן נתבטלה ההסכמה ההיא ועם זה נולדים מידי
יום ביומו כמה פרצות ופרצה קורא (?) וכדי בזיון וקצף ואין לך יום
שאין קללתו מרובה מחבירו והדור לאו בני כשרים אשר בעיני אלהים
ואדם ולכן אנחנו ממוני שני הקהלות קדושות שבקורפו יע"א.....
.....כהעת בתוך העיר נקבצים לראות ולעשות סדרים וסיגים
גדרים ותקונים להק"ק יע"א וכדברי הנביא ישעיה ע"ה (ישעיה נ"ו. י"ד.)
הרימו מכשול מדרך עמי ועל כן ניתן סדר יעקב מיוני נר"ו שיכתוב בעט ברזל
ועופרת רשום על ספר נוסח ההסכמה סדריה וסיגיה כפי כוונת המעמד הנז'
יע"א ובהגיע תר קיבוץ המעמד המ.....להשמיע להם כל הנרשם
אנחנו ממוני ק"ק איטליאנו עם הנגידים המובר[ים] שלחנו לקרא לממונים
ומובחרים מהק"ק אחר כדי להשמיע ולפדסם לפני כולם הנז' בהיות כי ראה
ראינו.....לשכון כבוד בארצנו וגבירי הק"ק אחר פצו פה ענו ואמרו
שאין רצונם להיות.....אלא כל איש הי[שר בעיניו יעשה] כשמענו את
הדבר הזה קמנו ונתעודד כיד ה' הטובה עלינו להלוך ולחלות אילוסטרי [סימו]
ריגימנטו יר"ה ולהתנפל לפניהם יתפייסו לכתוב ולחתום תחת שולי ההסכמה
.....דיקריטו כדי להקים דגל סגל ההסכמה הקדומה מחודשת כדי שיהיה
לה כח רשות.....קיים שר יר ובריר בכל תנאיה ופרטיה ודקדוקיה אזהרותיה
ועונשיה כמו שהיא על בורייה וקודם כל דבר נמנו וגמרו עם הכח הנז' לפרסם
התנאים הנז'.....פרסום הסכמה והטלת החרם

לא יוכל ולא יורשה שום משודך ללכת לבית משודכת ולא המשודכת
לבית המשודך שלה בשום מקום ובשום זמן אלא חדש ימים קודם הנשואין

יהיו מחוייבים שבאותו חדש לא יתיחדו המשודך והמשודכת לבדם עד אחר הנשואין ומחוייבים לעשות המשודכים אשר לעבר נכנסו בבית המשודכות קודם העשות ההסכ[מה].....מי שיהיה שגם להם יהיה רשות לחדש ימים מיום פרסום ההסכמה הנז' לצאת ולבו'..... [ה] סיגים והסדרים הנז' ואם באולי באותו החדש טרם הגיע עת הנישואין אחר שנכנס המש[ודך] ולא יוכלו לתת גמר לנשואין אבל יהיו מוכרח[ים] להאריך הזמן כשיעבר החדש הנז' יסור המשודך והמשודכת.....להרים מכשול ולסלק הששא מבנות ישראל גמרנו שגם באותו [חד]ש לא י[תיחדו בלי] שמירת אחד מקרובי הכלה כדי שלא יהיה חשש חוצפא ח"ו:

תנאי ב' לא יורשה שום אדם לתת קדושין אלא סמוך לשבעה ברכות באופן ש[הארוסין והחופה] יהיו יחד ולא קדם לכן:

תנאי ג' שאם באולי לא יהיה שעת הכשר לכתוב שטר שדוכין בהיות הדבר נחוץ אחר ורוצה לקדש כזה ראה וקדש שיהיה ברכת אירוס[ין] .....ובפני חכם שיהיה בימים ההם ובפני שני זקנים רשומים ובפני ק[ר]וב[י] [ה]ח[תן] [והכלה ואחר]. חדש ימים יכנס לחופה בלאו הכי יפרד מהכלה וגם באותו חדש יהיה תחת.....הנז' לעיל ואם אחר הקידושין ירצה לשים לדרך פעמיו ולצאת מהעיר בלתי עם(?) הכלה כנז' יהיה רשאי בחזרתו לעשות החדש הנז':

תנאי ד' שאם באולי ושמא יאמר שום יחיד מקהלינו זה יע"א שקדש אשה בפני עדים מעתה ומעכשיו הקידושין ההם יהיו מופקעין שביתין שביקין ומבוטל[ין] אין בו ממש כאשר היתה ההסכמה קדומה על זה וכחם וכחנו בהפקעת ב"ד [דר'] אמי ורב אסי דאלימא והמקדש והמקודשת והעדים יהיו נכשלים ונלכד[ים] במאה דוקאטי הנז'.

וכל מי שיעבור על שום א' מהד' תנאי ההסכמה הנז'.....ומובדל מקהל עדת ישראל ומוחרם לשמים ולבריות יהיה ג"כ נלכד בקנס הדוק[אטים] חציים לאילוסטריסימו ריגימינטו יר"ה וחציים לביהכ"נ שלנו גם לא יורשה.....יחיד מקהלינו זו יע"א לנוס ולברוח ולהמלט באומרו כי אינו רוצה להיות להבא יח[יד] רוצה להיות עם קהל אחר שעם כל זה יהיה נתפס ונלכד בקנס המאה דוקאטי בבית הכנסת מובדל ומופרש כנז':

תנאי ה'. הסכמנו שהאב המשדך את בתו אם היא בוגרת בת י"ג שנה ומעלה שישאלו [אם] מפוייסת בחתון שעשה ויכתבו בשטר נדר רצונה כדי שלא יהיה לה פתח.....ולומר שאביה שדכה בלא רצונה:

תנאי ו'. שהנישואין שיהיו בערב שבת קדש יהיו קדם חצות כדי שלא יאחרו ויבואו לידי חלול [שבת]:

תנאי ז'. הסכמנו לתת צניעות ותפארת צבי לנשים כבודות ופנימיות שלא יורשו

בלכתן.....אלא לכסותן תחת בגדי לבושיהן ותחת צעיפיהן
וגם כן לא יראה בשר.....
.....ותגבורת התעוררות היצה"ר כל שכן וקל
וחומר לכסות.....נכונו מזומנות להסית ולפתות לב בני
אדם ויהיה חיוב מוטל על כל.....
לאשתו אזהרה בתר אזהרה וכן האב לבתו להיות בנות ישראל
צנועות ולא כנפקת ברא אלא מצויינות בבשרן ובלבושיהן משום
לא תעשה כמעשיהם:

[תנאי ח'] [הה]סכמה הקדומה שכל חולה המוטל על ערש דוי עם קדחת
תמידית עם חשש סכנה ביום..... [יתודה] חטאיו בהיות שאין
שלטון ביום המות ואין דבר מסופק יותר מהחיים וכמו שא' [י]שוב
היום שמא ימות למחר ועם זה יהיה מובטח שהקב"ה.....
לו וימחול לו על כל חטאתיו וירפאהו ויחלימהו כמאמר המשורר
הסולח [לכל עוניכי] הרופא לכל תחלואיכי:

[תנאי ט'] [ההס]כמה הקדומה לבלתי היות לשום איש רשות לתלוש שער.....
.....ובבשרם לא ישרטו מת ב"מ לקיים מצות תורתנו האומרת
בנים אתם לה' אלהיכם לא תתגודדו ולא.....עיניכם
למות כי עם קדוש אתה לה' וגו' מאחר שיש לכל בר ישראל
השארות הנפש.....המתים בע"ה:

[תנאי י'] .....רשות לשום אשה מקוננת ומענת על המתים הן שיהיה המת יהודי
או נכרי כדי לעורר.....לענות בשום צד ואופן לא ביום
ש"ק ולא בי"ט בהיות דבר מגנד לתורתינו כנודע:

[תנאי י"א] שבכל יום ויום דבר המצוי בהווה שהיתומים האומללים נופלים
לדוחק השעה על אודות [גב]יית הנדוניא לכן ראינו לעשות סדר
ותיקון טוב וישר בעיני אלהים ואדם שאם באולי יפטר.....
אחריו בנים או בנות עם האשה ההיא שלא תגבה אלא הנדונייא
דוקא כשהכניסה לבית [ומא]תים זוזי דחזו לה והתוספת ישאר ביד
היתומים אבל אם לא ישארו לה בנים ממנו.....הנדוניא
והתוספת וכן אם תפטור האשה וישארו לה בנים או בנות מאישה
יהיה מחוייב.....לתת לבנים כל נדונית אמם ולא יעכב בעדו
השליש מהנדונייא שהכניסה לו וכל זה כדי שיתפרנסו היתומים
מנדוניית אמם ומנכסי אביהם עד אשר ירחם ה' בחמלת ה' עליהם:

[תנאי י"ב. כדי לסלק כל חשש אונאת ממון שיוכל להעשות במכירת היין
בהיות שיוכל לערב לאחד או למכור ב' או יותר חביות לערך
א' שיעריכו לו הממונים יע"א לכן מעתה ומעכשו בעל נפש המוכר
יין יזהר וישמר מלעשות הדבר הזה מלבד שיכשל בקנס המסודר
[לשררה] יר"ה ילכד ג"כ בקנס נח"ש:

.....בשנה בחג המצות ובחג השבועות ובחג הסוכות.....
ההסכמה הזאת תכרה לא יסוף מזרענו לעולם:

כל הסדרים וסייגים וגדרים של ההסכמה הזאת יהיה חיוב מוטל על כל יחיד מקהלנו זה לשמור בכל לב ובכל נפש כי חיים הם למוצאיהם וליותר חזוק וכח כל הנ"ל נחלה פ[ני]... נתנו לו רשות להטיל חרם חמור וגמור כדי שילכד בפח כל המסרב ומגנד לשום א'.....
ומופרש מקהלינו זה עם כל החומרות היתרות שיהיו באפשרות מלבד בקנ' מאה.....

העובר על שום א' מהד' תנאים הראשונים ובהסכמה הנ"ל שיהיה.....
.....וכדי לחזק ולקיים ולאשר כל הנ"ל נחלה פני השררה יר"ה נתפייסו לשים.....ומפורש לעיל והכל שריר ובריר וקיים.

אלה שמות בני ישראל המובררים הממונים אשר היו בימים ההם

הזקן הנבון ה"ר מנחם ציזאנה ר' שמואל ציזאנה ממונה
הזקן הנבון ה"ר אברהם פיפי ר' חיים פיפי ממונה
הזקן הנבון ה"ר שבתי דינטי
הזקן הנבון ה"ר דניאל קורניל
הזקן הנבון ה"ר אליהו דימורדו
הנבון ה"ר אברהם גאון
הנבון ה"ר יצחק מולי

ביום ש"ק י"ג למב"י שנת ת"ח"ד"הו בשמחה היכיר (?).....כה"ר אברהם ן' עזר והגביר רבי.....

ק"ק איטליאנו וע"א לפני הגבירים המבררים יע"א ההכרח שיש לפרש דברי ההסכמה בפרט על התנאי א' שאומר שאם יהיה מוכרח להאריך הזמן החופה וכו' מאשר..... הסכימו לפרש":

היאך שבהסכמה הנרשמת התנאי א' אומרת שאם יארע איזה מקרה בלתי טהור ולא יוכל..... ויהיה מוכרח להאריך זמן החופה כשיעבור החדש יצא המשודך ולא יכנס עוד לבית המ[שודכת]..... הכושר ליכנס לחופה וכו' והדברים סתומים וחתומים לא נודעו איזו היא שעת הכושר [פי]רשו הברורים ח"מ שיובן ח" ימים קודם הכנסו לחופה כדי שיוכל להיות שם בעת הערכת דברים ההכרחיים לחופה ואם באלו הח" ימים יארע דבר אונס ניכר וידוע לכל ולא יוכל.....מיד כבראשונה לא יהיה לו עוד שעת הכשר אלא ג' ימים קודם החופה.....לא יהיה לו וכל זה בלי שום ערמה ומרמה בקנס נח"ש ולראייה.....

יום ד' י"ח סיון שנת.....והכל שריר ובריר וקיים

TRANSLATION

.....they made a perfect and upright ordinance that no affianced man should foregather with his fiancée nor go to her house, so that they may come to no temptation. This is in accordance with the view of our Sages of blessed

memory, who said, "Shun evil and what is like to it".[1] In the course of an indefinite time this ordinance has fallen into disuse. As a result every day there occur cases of indiscretion giving cause for untold shame and disgrace. No day passes without its curse being worse than that of the preceding. This is all the worse in a generation such as this, whose people are not fit....in the eyes of God and men. Therefore have we, the officers of the two communities of Corfu, assembled to look into the matter and to make regulations an ordinances for the Community, in accordance with the words of the Prophet, "Take up the stumbling-block out of the way of My people".[2] Therefore have instructions been given to Jacob Miuni that he should write "with an iron pen and lead"[3] on parchment the text of the ordinance in accordance with that he should write "with an iron pen and lead"[3] marked on parchment the text of the ordinance in accordance with the intention of the said Committee. When the time for the gathering of the *Ma'amad* came so that they might hear all that had been written we, the officers of the Italian Congregation, with the chosen leaders (of..... Congregation) sent to call the officers and chosen men of the other Congregation in order to announce and declare before them all the terms of our ordinance for we have seen that it is time for the Lord to gather glory in our country. But the leaders of that other Congregation declared that they could not agree to be at one with us but each one should be free to do as he please. When we heard this, we "arose and stood upright"[4] "according to the good hand of the Lord over us"[5] and decided to go to our most illustrious governors[6] to prostrate ourselves before them, that we might persuade them to write and sign

[1] *Hullin* 44b.
[2] Isaiah 57.14.
[3] Job 19.24.
[4] Ps. 20.9
[5] Neh. 2.8.
[6] In 1389 Corfu placed itself under the protection of Venice which in 1401 acquired formal sovereignty to the island. The ruler referred to is therefore the Venetian governor.

a decree beneath the ordinance in order to establish the ancient ordinance which is here renewed so that it may have authority. After the announcement of the ordinance and the declaration of the *herem* no affianced man shall be permitted to enter the house of his fiancée, nor shall an affianced woman enter the house of her fiancé, in any place or at any time, except one month before the wedding. During that month the betrothed couple must not be together in private until after the wedding. Those who were engaged and have entered the house of their betrothed before the passage of the ordinance shall have the privilege of coming and going into the house of their betrothed for one month from the day of the promulgation of this ordinance, under the rules and regulations mentioned. If they cannot arrange for the wedding within that month but are compelled to postpone the time of their marriage, then when the month passes the betrothed pair shall separate .....In order to take up the stumbling block and to remove all suspicion from the daughters of Israel, we have decided that even during that month they shall not be in private without the guardianship of one of the relatives of the bride so that there may be no suspicion of impropriety.[1]

Regulation 2. No person shall be permitted to perform the *Kiddushin* except at the same time as the recital of the Seven Benedictions, so that the *Erusin*[2] and the *Huppah* may be together.

Regulation 3. If the time is not opportune for writing a document of betrothal.....and the groom wish to perform the *Kiddushin*, he may perform it in the following manner: that the benediction of *Erusin*..... shall be

[1] Part of the missing text of this section is quoted in the note below but I have not been able on that basis to reconstruct all that is lacking.

[2] *Erusin* is the ceremony by which a man becomes the husband of a woman to the extent that she may not marry another. He may not have marital relations with her until the *Huppah* has been performed and the wedding benedictions recited. Already in the *mishna* it was noticed that very often these prohibitions would be transgressed. Especially were the betrothed lax in this regard in Judaea (*Ketubot* 1.5).

recited in the presence of the Rabbi of the time, and in the presence of two elders and in the presence of.....(?), and within one month thereafter he shall perform the *Huppah*.[1] Otherwise he shall part from his betrothed. In that month, too, he shall be under the restrictions applying in cases arising under the first regulation. If after the *Kiddushin* he desires to go on a journey without his betrothed, he may have the privilege of the said month on his return.

Regulation 4. If by any chance any member of our Community will say at any time that he performed the *Kiddushin* with any woman in the presence of only two witnesses,[2] those *Kiddushin* are now declared null and void, in accordance with the ordinance that was previously in force in regard to this matter. The power of those who ordained the previous ordinance and our authority is as strong as the Court of R. Ammi and R. Assi[3] to declare *kiddushin* null. He who performed the *Kiddushin*, and the bride who accepted them, and the witness shall be fined one hundred ducats,.

[1] That is if for some reason or another it is not possible to draw up a contract of betrothal between the couple, the *Kiddushin* may be performed so that the husband will be bound legally. Talmudic law requires for the *Kiddushin* merely the presence of two witnesses; the Takkanah requires the presence of at least the Rabbi and two elders. The *Huppah* may be delayed a single month. If the bridegroom leaves the city, he may delay the *Huppah* for a month after her return. See also Res. R. Isaac b. Sheshet, 399.

[2] Endless complications resulted in the Middle Ages from the law binding a woman who had accepted a ring or other valuable to the man who had given it to her. Even if the Rabbis were satisfied that there was no good cause for considering the *Kiddushin* valid, yet they would hesitate to permit a woman who had been the victim of such a fraudulent *Kiddushin* to marry another man without a bill of divorcement. The only remedy was to forbid the performance of *Kiddushin* except in the presence of ten people. This was often done, but it was seldom that the Courts assumed the power of declaring void *Kiddushin* performed in violation of such an ordinance. See above p. 80.

[3] The Court of R. Ammi and R. Assi is mentioned (*Gittin* 36b) in connection with the right to issue a *Prosbul*, but that court is cited here as an example of an authoritative Jewish court.

Whoever transgresses any of the four said regulations of this ordinance shall be excommunicated and separated from the Community of Israel, and declared anathema before God and men, and he shall also be compelled to pay a fine of a hundred ducats, half of which shall be given to most illustrious governor and half to the Synagogue. Nor shall any member of our Community be permitted to escape by saying that he no longèr wishes to be a member of our community but prefers to join another community; in spite of such a claim, he shall be declared under excommunication and under a fine of one hundred ducats.

Regulation 5. We have ordained that if a father arranges for the betrothal of his daughter after she is mature, that is after she has reached thirteen years of age, he must ask her whether she is satisfied with the betrothal which he has made, and they shall write into the document the promise of her agreement so that she may not have any excuses for change of heart saying that her father betrothed her against her will.[1]

Regulation 6. If the wedding take place on Friday,[2] it must be performed before noon so that it be not prolonged and the Sabbath violated.

Regulation 7. We have ordained in order to inculcate modesty in Jewish women that they shall cover.....and also their flesh shall not be seen.....for this causes strengthening and the arousing of evil passions, and all the more shall they be obliged to cover those parts..... prepared to entice and lure the hearts of men. It shall be an obligation resting on (every man to exhort) his wife time and again, and similarly a father shall exhort his daughter, so that the daughters of Israel may dress modestly

[1] Rabbinic law permits the father to give his daughter in marriage to the husband of his choice till she is twelve years and six months old: the age of thirteen is mentioned here is being approximate; after the girl has reached that age her consent is required for marriage. Unless that has been obtained she may nullify the *Kiddushin*.

[2] Weddings on Friday were forbidden in Talmudic times, but they became quite common in the Middle Ages.

and not like outcasts. But they shall be careful in their bodies and in their clothes, so as not to transgress the prohibition against imitating the Gentiles.

(Regulation 8). The ancient ordinance that every sick person lying abed with chronic fever, shall, if there is a suspicion of danger to life, confess his sins, since there is no one "who hath power over the day of death"[1] and there is nothing more doubtful than life as the Rabbis say "Let one repent today, lest he die to-morrow."[2] Thus he will be assured that the Holy One, blessed be He, will be kind to him, will forgive him all his sins, and heal him and bring him back to his health, even as the saying of the Psalmist, "who forgiveth all thine iniquity, who healeth all thy diseases."[3]

(Regulation 9) The ancient ordinance that it shall not be permitted anyone to tear his hair. "nor make cuttings in his flesh",[4] because of any dead person. Thus we shall obey the law of our Torah which says, "Ye are children of the Lord, your God; ye shall not cut yourself (nor make any baldness between) your eyes for the dead, for thou art a holy people unto the Lord,"[5] since every child of Israel is endowed with Immortality of the Soul and a portion in the Resurrection of the Dead in the world-to-come.

(Regulation 10) No woman shall be permitted to act as "mourner or one who wails" for a dead person whether the deceased be a Jew or a Gentile in any manner or form either on the Sabbath or on Festivals, since as is well known, this practice is antagonistic to our Torah.

Regulation 11) Whereas it is a usual matter for wretched orphans to fall into need because of the collection of the dower-right by the widows, therefore have we seen fit to establish a regulation and an ordinance which will be upright in the eyes of God and man; namely, that if a man

[1] Eccl. 8.8.
[2] Sabbath 153a.
[3] Ps. 103.3.
[4] Deut. 21.5.
[5] Deut. 14.1.

die and is survived by sons and daughters which he had by the widow, she shall collect only that property which she brought to her husband, but her *Ketubah* and the Additional *Ketubah* shall remain in the hands of the orphans. But if no children by her survive him, she shall collect all that is due her, both the property which she brought him and the Additional *Ketubah*. Similarly of the wife die, and she is survived by sons or daugthers by her husband, he shall be obliged to give to the children all the property which their mother brought him and he shall not keep for himself more than a third of the property which she has brought him.[1] All this have we ordained in order that the orphans may be supported from the property of their mother or the estates of their father until the Lord have mercy on them.

(Regulation 12). In order to remove every suspicion of deception which may occur in the selling of wine since it is possible to mix wines or to sell two or more jars at the rate which the officers fixed for one, therefore henceforth. . . . . every pious wine-seller shall be careful and take heed not to do such a thing, for besides being fined in the prescribed manner he shall be declared excommunicate and anathema.[2]

(Thrice during) the year, on the Passover, Shebuot and Succot Festivals, this ordinance shall be read and its memory shall not pass away from our children forever.

All the rules, regulations and ordinances of this Takkanah shall be an obligation resting on every member of this our Community, that he may keep it with his whole heart and soul, for "they are life unto those that find them".[3] In order to give even more power and authority to all that has been written above we shall beg the rulers to give us the authority to declare a severe and complete *herem* against anyone who refuses to obey or opposes anyone of the (regulations) and he shall be separated from our

[1] Compare Takkanah passed in 1494 at Fez, *Kerem Hemer* II, § 2 and 3.

[2] Compare Takkanah of Castile, 1432, p. 366.

[3] Prov. 4.22.

Community. This is beside the punishment of the one hundred ducats for the person transgressing any of the first four regulations of this ordinance. In order to establish, strengthen and make permanent all that has been written above we shall ask the Rulers that they may agree to affix their endorsement as is explained above.

These are the names of the children of Israel who were chosen and of the officers who were in office at that time;

The Elder, the Scholar Menahem Cesano
" " " " Abraham Pipi
" " " " Shabbetai Dinti
" " " " Daniel Cornil
" " " " Elijah Dimordo
" " Abraham Gaon
" " Isaac Moli
R. Samuel Cesano, officer
R. Hayyim Pipi, officer

On Sabbath, the third day of the Omer, of the year 5412, Abraham ibn Ezra and the prince.....of the Italian Congregation put before the chosen leaders the necessity of explaining the above ordinance, especially the first regulation, which says that "if it should be necessary to delay the time of the wedding, etc." They agreed to explain: That whereas in the said ordinance, the first regulation says that "if any accident should occur and they be unable to arrange for the wedding and be compelled to postpone the time of the *Huppah*, then when the month passes by, the bridegroom shall leave the house and shall not again come in to the house of his betrothed until it is the proper time to perform the ceremony" and these words are obscure, since it is not definitely stated how long a time is meant by "the proper time[1] to perform the ceremony". Therefore the undersigned chosen men, have declared that by the expression "proper time" is to be understood eight days before the wedding,

[1] The words שעת הכשר seem to have been taken not in the sense of *proper time* but *time of preparation.*

so that he may be there at the time of the preparation of necessary things for the wedding. If during those eight days an accident, clear and definite before everyone should occur and he be unable to marry.....he shall again leave the house of his betrothed and shall not enter until the time of preparation for the wedding. The time of preparation shall be only three days before the *Huppah*....

CHAPTER XII

TAKKANOT OF ARAGON

The following Takkanot were first printed by Schorr in *He-Haluz*, I. 20, from a manuscript which is now in the Bodleian Library (Neubauer 2237, fol. 271). As no other Ms. of it is available, it is here reproduced as it first appeared, although the text in several places appears to be corrupt.

ואלה דברי הברית

שה פזורה ישראל אריות הדיחוה, וכמו ערמים סלוה, וכל עוברי דרך רבוה וארוה וימרטוה, קמו בה עדי שקר ויפח חמס, לשומה כחומר חוצות וכמעין נרפס מרמס, ועל לא חמס הכוה פצעוה עד חרמה, סבבוה בכחש כל אומה ואומה, ברבה משטמה ומרמה, גלחו אותה בתער השכירה לאכלה בכל פה, את הראש ושער הרגלים וגם את הזקן לאין מרפא תספה, על לבושה יפילו גורל, ובנוה רבצם חלקם שלל ויהלילו יגילו. מצאוה כענבים במדבר, כבכורה בראשיתה אשר הרואה אותה יקחנה, בעודה בכפו איננה יבלענה. בשקריהם ובפחזותם שמו לה עלילות דברים, למען עזוב תעזוב באר מים חיים לחצוב לה בארות ביערים נשברים. ורבים רכי הלבב חלושי הטבע אשר בנחושתים הוגשו בראותם אופן העגלה מסעף פארה אין כח להם לעמוד בהיכל הנסיון ועברו בהיותם בצרה מעברה. אש וגפרית ורוח זלעפות מנת כוסם, לירות לישרי לב ידרכון קשת כוננו כחפצם חצם. זכרו ימות עולם בינו שנות, תמצאו כי עצמו מספר ורבו הסכנות מלמנות. וכמה קהלות עדינות היושבות לבטח היו כרגע לשמה, נשמדו כעין דאר היו דמן בלי אשמה לאדמה. כל התלאות הקורות אותנו בעינינו ראינו, ואנחנו מחשים ונדמינו וחכינו. על כן ילדי פשע נדלו ויעשירו, ועמוסים מני בטן כבודם בקלון ואשר האמירו המירו. מה לעשות לה ללבוש בגדי נקם תלבושת השרידים, והיו המחזיקים במלאכת העם הרודים לאחרים, ויבואו מהרה חושה כלם קדושים כל העדה, להכין אותה בעודה ולסעדה. ואם היא תחיל תזעק, בחבליה ואין מושיע לה, ולא ירדו השומעים קולה להצילה פשה תפשה הנגע ויהיה אסון, ודפקום יום אחד ומתו כל הצאן והחסון. ואם ידברו עליה כזבים, וכל ישראל בהיותם כואבים ערבים, כל הקהל כאחד ינישו עצומותיהם, בטרם יתנגפו רגליהם ויצילו הם וכל אשר להם ובניהם. וכאשר לא עשו ככה ועברו תורות חלפו

חק, עשו מדמם של ישראל בעמדם מרחוק שחוק, על זה היה דוה לבנו וחשכו עינינו וערבה כל שמחה, כי הרגו חנם כה וכה אחד מעיר ושנים ביגון ואנחה ממשפחה ולא היה נודד כנף ומצפצף ופה פוצה ולכן כל איש הישר בעיניו ואשר ירצה יעשה. אבל בהעשות כל הקהלות אגדה אחת וכיס אחד יהיה לכלנו יוקח מגבור מלקוח, ואם אבן הוא ברב כח נמוח, ואם יחדו יעלו חמושים והיה כמסוס נוסס, אם ברזל הוא וכפטיש סלע יפוצץ מתפוצץ. ובהשתדלותם ובזריזותם האמיץ בבואם להתלונן בצל שדי ותחת כנפיו לחסות, לא יבצר מהם כל אשר יזמו בבואם במסות לעשות, עתה בראותנו כי כל חלקה טובה הכאיבו וכל עץ טוב הפילו, ואותנו עד עפר השפילו ויעפילו, (ויאפילו?) ולילה ויום יערימו סוד עד היסוד לערות הבת העניה, ועוד ידם על השה הדחויה נטויה. ומה נוחיל ומה נחוס על ממונו ונהיה אנחנו ואדמתנו עבדים לכספנו, הלא טוב לנו להציל עמו נפשותנו, בעוד אשר מאודנו בידנו. וראינו כי כאשר איש אין בארץ לדבר הזה ישעה, עדר ה' כצאן אשר אין להם רועה, והנה העם כרמש לא מושל בו כדגים במצודה נאחזים. כי המנהיגים וראשיהם החוזים החזים, על פי הדברים האלה התעוררו אצילי בני ישראל, היא האבן הראשה העיר ההוללה אשר להם נאוה בגדולה תהלה, וקבצו מהקהלות כאסוף בצים עזובות' וקורא להם גודרי פרץ לשובב לשבת בשוקים וברחובות נתיבות, והשרידים אשר ה' קורא שמעו לקולם נקהלו ועמוד על נפשם, מלכם לפניהם וה' מעריצם ומקדישם בראשם. והוציאו ממורך גבורה ומיעף כח ומאין עצמה אתים והציבו להסיר מדרך עקש פחים צנים, ציונים, ולהיות העקוב למישור ולישר הדורים שמו, מדרך העם מכשול להרים, תמרורים, (ע' ירמיה ל'א. כ.) והערימו סוד והדברים עתיקים ועשו להחיות לב נדכאים משפטים וחקים צדיקים כי חיים הם למוצאיהם, ויניח ה' לאחיהם כהם. והנבדל מהם ופיהם ימרה, יבדל מקהל ישראל וסורר ומורה יקרא, והשומר אותם השם ישמרהו, ואשר בארץ וכצדקו יגמלהו ויחייהו, בונה ירושלים יבנה דבירו ויקים דברו, מזרה ישראל יקבצנו כרועה עדרו ישמרו, ינקום דם נקמת עבדיו השפוך ומדם קמיו ישכיר חציו, ישיב הצאן צאנו למעונו ויקבצם מקצוי ארציו לנקביציו. וכאשר קבצנו לטוב לנו יטהרנו ולבית קבצו פארור יכבס ובנוה שאנן אהל בל יצען נדחי ישראל ונפוצות יהודה למרבץ יקבץ, ככתוב (ישעיה י"א. י"ב.) ונשא נס לגוים ואסף נדחי ישראל ונפצות יהודה יקבץ מארבע כנפות הארץ אמן כן יעשה ה'.

ובפרוע פרעות בישראל בהתאסף ראשי עם וגדוליהם לשית עצות בנפשם להתנצל מפח יקושיהם, ולגדור את פרציהם, הסכימו לאזור כגבר חלצים ולאמץ כח, לדעת לעות את יעפי כח, אולי יושר בעיני האלהים ותמצא היונה מנוח. ומאשר יום ברא אלהים בארץ חדשה, וחרבו הקשה קעה (אולי צ"ל ובחרבו הקשה קנה) בעברי פי פחת, עלון ומנחת(?), וליוצא ולבא אין שלום ונחת, כי שובבה העם משובה נצחת, לשלול שלל ולזרות במזרה וברחת, והמשאת החלה ואש מתלקחת, וגם ראה ראינו כי אזלת יד הקהלות וגרע ערכה מהשיג כל אחת מהם ההכרחית אליה ולא תמצא

ידה להיות לה מחיה מעט בעבדותה. ואם אחת אל אחת לא תעזור ולא יגהה לחליה מזור ויראנו פן תמוט ידנו עד כי לא נוכל להשלים להביא הכסף המוטל עלינו מדי שנה בשנה אל גנזי המלך אשר השאיר אותנו שארית בארץ, ונראה לפניו ובפני יועציו ושריו ככפויי טובת רחמיו וחסדיו, לדבר הזה בחרנו להיותנו לאגדה אחת לבל יהרס מצבנו, ולבלתי יהיה מראנו כן משחת, ובכן נבוא אל המלך כדת להתחנן לפניו באהבתו ובחמלתו, להסכים על ידנו להציב לנו יד ולהעמיד סדרנו זה על מכונתו ולהיותנו רצונו מפיקים לתת לנו על דבר הסכמותינו ולאמץ כח הנבררים חותמות מספיקים והסכמנו להיותנו כלנו כאיש אחד חברים בכל דברי ההסכמות הכתובות בספר הזה, והתקנות והגדרים מיום הנתן אלינו כח ויכולת מאת אדנונו המלך יר"ה על הענינים הנמשכים עד תום חמש שנים. ולדברים האלה הסכמנו להרים מאתנו אנשים, להיותם לכל התקנות ולדברים האלה ראשים.

וזה אשר ישתדלו ראשונה:

תחלה לאחוז פני כסא מלכנו יגדל וינשא, אשר מאז הוא ואבותיו מכורותיו ומולדותיו מלכי חסד המה ובצלם בגוים חיינו, היא שעמדה לאבותינו ולנו מיום על אדמת נכר גלינו וכנורותינו תלינו. וגם עתה לפניו נבא ונשתחוה ונכרעה, אשר ברב חסדיו עלות ינהל והנדחה והצולעה וזאת המרגעה אשר בדבריו הצודקים והנאים, יליץ בעדנו אל מלך הגוים האפיפור יר"ה אם על ידי כתביו החמורים או [אולי צ"ל החמודים] לשלוח שם שרים רבים ונכבדים ישתדלו ויבקשו מטעמו:

להפר מחשבת עם הארץ הרעה אשר ביום תוכחה דבר כי יהיה, רעב כי יהיה ירעשו מגרשות [אולי צ"ל מרגשות] לאמר בפשע יעקב כל זאת נכחידם מגוי ונכרת הנפשות ותחת היותם מחויבים בעת צר לעשות צדקה וחסד לחונן דלים זה דרכם כסל למו להתעולל עלילות על היהודים האומללים, לכן יצוה עליהם אשר אם שמא חס ושלום ה' משמים ישקיף על בני אדם באחד משפטיו הרעים, אל יוסיפו על חטאתם פשע למרות עיני כבודו, אבל יתחזקו ללכת בדרכיו אשר מכללם לשמור אותנו כבבת עינם, כי על אמונתם אנחנו יושבים:

עוד לשום לו חוק ומשפט בדתיו הנקראים דאגרטאלש ולא יעבור, שאם באולי איש מעדת ישראל אשם לעשות כנגד אמונתם וחקותיהם, אל ישובו המונם לכסלה בנכליהם כאשר עשו לאחינו קהל שביליא אשר לפי דבריהם על פת לחם יפשע גבר ועל העדה היה קצף. והגוי המר והנמהר ישימו לנגדם אשר על יראת אלהיהם כלם יחמו, ולבבם אחר בצעם יחם ושישים על זה חומר חרם ונידוי על כל אשר ישלח ידו על זה ביהודים לאבדם, ועל התומכם ומחזיקם והבא בסודם, זולתי הנפש החוטאת אשר על פי המשפט תמות בעונה. ושאף אם על זה עם הארץ ישימו אותותם אותות דם ואש ותמרות שיבאר כי

הוא מכת הנמנע שיראו האותות למען השמידנו או הכחידנו מגוי, לבאר על כל אשר בזה מאמין שהוא מין כנגד אמונתם ומשפטיהם אשר צוו להשאירנו שא־ית בארץ ולחיותינו בתוכם, כי כן צותה דתם מאז היתה לגוי.

עוד באשר עריצי הגוים וכסיליהם יחשבו להם לצדקה סביב פסחם לבנות עלינו דיק ולשפוך סוללה, שיבאר להיות זה להם עון אשר חטא ולא יוסיפו לענות נפש היהודים, כי אם במה שנצטוו, והוא שיעמדו תוך שכונתם וסגרו על מסגר ביום ההוא.

עוד שיבאר לבלתי תהיה חקירת המינות כוללת היהודים, כי אם בדבר שוה לכל הדתות כמכחש באלהים לאמר לא הוא וכאומר אין תורה מן השמים, אך בדבר מחלקת הדתות, גם אם יהודי יחזק ידי נוצרי שהוא מין בדתו לא יפשה נגע המינות על היהודי. כי אי אפשר שיכנס בגדר המינות ליהודי מה שהוא צודק בו כפי דתו, אבל ראוי שיענש על זה מצד שבט המושל בו הן למות והן לשרושי, אך לא מצד חקירות המינות. ואם באולי לא נפק זה מאתו שיצוה שיתן הטפסה הנקרא טראשלאט לנתבע, ויהיה במשפטו טוען ומלמד זכות לפי שמן הידוע כי כל אשר העמיקו להסתיר דבר החקירה היתה זאת מיראת הנתבע אם תפול החקירה על שר וגדול, ואין היהודים בזה הכלל מהיותם קצוצי פאה והחלש מהמונם לא יחת וממנור לא יעבור אשר אלה ישמע ולא יגיד ועל זה הדבר נמשך עוות משפט ליהודים, כי רבים מהמון העם יחשבו להיות בעדן גן אלהים גם כי יכתבו על הם שטנה לא באמת ולא בצדקה.

להפיק באור עוד אשר אם נוצרי אחד ירצה להשיב הגזלה אשר גזל או העושק אשר עשק לאחד מבני ישראל יתחייב להשיבה ליהודי יד ליד או על יד הכומרים ולא ינקה להשיבה לאשר אשם היהודי לו.

כל הכתוב למעלה נצטרך לעשות על יד אדוננו המלך יר״ה ומלאכיו, אמנם באשר אנחנו היודעים הדברים המצטרכים אלינו כי לב יודע מרת נפשו, הסכמנו שנשלחה אנשים אשר חכמה ותבונה בהמה וילכו שם לעמוד על המלאכה להפיק אלינו החותמות הצריכים על הענינים הנזכרים כאשר תמצא ידם.

מלבד זה הסכמנו: שבכל הענינים הנזכרים ובכל הדברים הנתלים או נוגעים בהם יהיה כח לנברים להשתדל למראית עיניהם להשיגם ולברור עליהם משתדלים ושלוחים באיזה מקום ומלכות, ולהשתדל להשיג בהם כל מיני תקונים עם אדו׳ המלך יר״ה ועם כל שר ומושל ואיזה אדם בעולם.

עוד הסכמנו: שנתחזק על דבר אמת ומשפט שלום לשפוט בשערים, כאיש אחד חברים. מיום גלות הארץ ומקלות עריצי גוים את החובלים, העבירו מקל ורצועה ושבט מושלים סר כחנו ומטה יד היושב על המשפט ושופט ושפט אין כתיב כאן אלא נשפט, כי המשפט לאלהים הוא, ואין אלהים אלא מומחין, אשר כח בהם לרדת בעומק הדין ולהבחין, אף כי המקום גורם, כי שם צוה השם את הברכה לשבת על מדין והמסכה הנסוכה. ולכן אנחנו פה היום עוברים בעמק הבכא אין דם חטאים בנפשותם מסור בידנו, לנקום נקם

בנפשותינו ומאודנו, לבד ראה זה נסעד לאלהינו בכל דור ודור לכלות קוצים מן הכרם ולעדור, ולהסיר סירים סבוכים מלשין ודלטור, אף כי עתה המצוה עלינו, מאשר נמו רועינו שכנו אדירנו ופורצי פרץ פרצו ויעבורו וכמעט אין בדור מקבל תוכחת, כי שובבה העם הזה משובה נצחת ולכן לשם ה' אלהינו במועל ידים, אזרנו כגבר חלצים, וראשונה הסכמנו לבער כל מלשין ומסור אשר ימצא באחת הערים או להדיח עליו הרעה כדי רשעתו לפי ראות עיני הנבררים, ולהפריש כנגד המלשין ההוא מטעם כל הקהלות ולהוצאתם. אמנם שיהיה דבר המלשינות ההיא בדבר כללי יגיע בו נזק חלילה לכלל בני עמנו לא במלשינות פרטי שלא יצא ממנו נזק לכלל.

ומאשר עריצי גוים לא יוסרו בדברים וגדולה נקמה הסכמנו: להיותני לאגרה אחת וכיס אחד יהיה לכלנו באיזה דבר אואלוט יגיע חלילה לאיזה מקום שיהיה. יען כי נזק כזה נמשך לכל פן ילמדו ממעשיהם לא תקום ולא תהיה, אבל הנקמות הפרטיות, רצונו על המקרים הפרטים אשר אין בעד המקרים ההם נמשך נזק כללי, ולא בעד נקמותיהם תועלת כללי נמשך. יען אין הקול יוצא בכללות מן מלכות למלכות כל אחד יחוש לעצמו.

עוד ישתדלו: כשיקהלו השרים והסגנים והעמים במצות אדו' המלך יר"ה לעשות קורטש שיעשו קושטיטוסיאן שכל מי שיהרוג נפש אחד מישראל וכל הקורא אחריהם מלא בדרך אואלוט שלא יהיה רשות לשרים ולסגנים לתת לו מקום בארצם ולשכנו בתוכם אבל יחויבו לגרשו מן הארץ כלה גרש תכף יודע להם מעל האיש ההוא.

עוד הסכמנו: בכל עת יתקבצו השרים והסגנים והעמים לעשות קורטש שיחויבו הנבררים לשלוח שליחים כלליים לכל הקהלות להיות שם לפקח בעניני הקהלות או ילכו שם הנבררים עצמם ובלבד בקורטש כלליות לכל המלכות.

עוד הסכמנו: שישתדלו בענין קושטיטוסיאון החמש שנים.

עוד ישתדלו מאשר נוגשי המס עתה מקרוב פרצו ויעבורו להאריב נפש אחינו על דבר נגישתם ולתתם אסירי עני וברזל עד כמעט בנפש חללים יצעקו ממסגרותיהם הסכמנו שישתדלו להפיק חותם מושבע מאת אדו' המלך יר"ה לבל ינגשו נוגשיו הרודים בעמנו על דבר המס לענות נפש, כי אם על הדרך אשר נהג הוא ואבותיו מאז.

עוד הסכמנו: שישתדלו הנבררים להוציא חותם מאת אדו' המלך יר"ה שלא תהינה הקהלות מוכרחות לפרוע שום שלארי לנוגשי המס והאשיקנסיאונש באשר שכרם היה מאז על גנזי אדו' המלך יר"ה ולא על הקהלות.

עוד ישתדלו: להתחנן לפני אדו' המלך יר"ה לסלק אשיקנסיאו אדו' הדוק יר"ה, כי אף כי לו אנחנו אין ידים לזה כאשר נעשית בתחילה לביסקומטי דאילה לבקשת הקהלות למען יהיה טוען שלהם ועתה נתבטל הדבר.

עוד להפיק חותם מאדו' המלך יר"ה ובשבועה שלא יוכל לעשות שום אשיקנסיאון על הקהלות או קהלה מיום זה ואילך, כי בהביא הקהלות כספם אל גנזי המלך ימצאו חן בעיניו ובעיני יועציו ושריו, גם כי לעת תמוט ידם

יוכל אדו' המלך יר"ה לחונן עליהם כמנהגו הטוב, מה שלא יהיה כן אם יהיו המסים אשיקנאטש.

ומאשר רצי אדו' המלך יר"ה במצאם איש יהודי מתהלך לתומו בדרך שאול ישאלו ממנו פדיון נפשו, ואם תקצר נפשו מפדות יפילוהו למדחפות וממול שלמה אדר יפשיטון הסכמנו שישתדלו הנבררים להשיג ולהפיק חותם מאת אדו' המלך יר"ה כמשפט הראשון אשר השתדלו בו והשיגו איזה יחידים זה שנתים ימים, אך לא יכלו לתת גמר בדבר באשר קצרה ידם מפדות.

עוד הסכמנו: להשתדל להקל מעל הקהלות עול הוצאת המטות שעושין ומבקשין מהם בני חצר אדו' המלך יר"ה כיד אדו' המלך הטובה עלינו, ויען כי הוא משא כבד עלינו ולמלך אין שוה בנזקנו ובפזור ממוננו.

עוד הסכמנו: להפיק חותם מאת אדו' המלך יר"ה שלא לעשות קומישריש לחקור בשום דבר כנגד היהודים זולת האורדונאריש ויען היהודים הם תשישי כח ואין צריך לתתנם ביד אדונים קשה וגם כי בזה ההוצאות מתרבות וללא תועלת לאדו' המלך יר"ה והיהודים הולכים ודלים, אלא אם כן לבקשת הנבררים.

עוד ישתדלו: להפיק מאת אדו' המלך יר"ה שלא לחקור לבקשת פישקאל אלא אם כן תובע בדבר רצוננו לומר קלאמדור ליגיטים ואף אם יהיה בתחלה אם יבטל התביעה או התרעומת שעשה שלא יהיה רשות לפישקאל לרדוף אחריו כדי להשלימו למען קנסו, וכן לא יוכל הפישקאל לעכב ביד האורדנריש אם ירצו לעשות פשרה או אם ירצו להניח הכל מחסד.

עוד יפיקו הותם שלא יוכלו הסופרים ורצי החצרות לעשות עצמם מעורכי הדינין בשום דבר ריב ומצה בשום תביעה שיש בין אדם לחברו ושינהגו במה שראוי למנוים ולאומנותם לבד.

עוד הסכמנו: שישתדלו הנבררים להפיק חותם מאת אדו' המלך יר"ה להכריח כל קהלה וקהלה מקהלות המשתתפות בזה לפרוע חלקה המוטל על"ה כפי החלוקה הנעשית בינינו ושינגשו לפרעון הוצאות אלו כנגישת מסי אדו' המלך בנוף או ממון בחרמות ובנדוין, ושתעשה הנגישה הנזכרת על פי ה:בררים ובהסכמתם ולהוצאת הקהלה שתסרב לפרוע חלקה.

ולפי שאין כל הקהלות משתתפות עמנו היום ומהם בכתבם השכילו להיות המלאכה נכונה בעיניהם, וכי הם נכונים לעלות ולראות עמנו ואחרו מן המועד אשר יעדוהו אולי לסבות הכרחיות, ומהם הודיעונו גדוליהם כי ישרה המלאכה בעיניהם, אמנם לא עלה בידם להיותם אתנו לאגדה אחת. ואנו צריכים להשתדל בקצת ענינים כלליים ותועלתיים ואין מן הראוי שנבזבז ממוננו והם יקחו חלקם בתועלת בהיותם יושבים בבתיהם צפונים, ולא יתנו חלקם בהוצאה, על כן הסכמנו שבכל אותם החותמות והנהגות ודרכים שישיגו הנבררים שימשך בהם לאותם הקהלות תועלת שיפיקו חותם מאת אדו' המלך יר"ה להכריחם לפרוע חלקם באותם הענינים כפי התועלת המושג עליהם למראית עיני הנבררים.

עוד הסכמנו: להפיק חותם מאת אדו' המלך יר"ה שאם אולי יבוא שום

יחיד מכל הקהלות המשתתפות עמנו או מזולתם לבטל דבר מכל דברי ההשתתפות הנזכר, או לבטל ולגרוע כח הנבררים הנזכרים או שום אחת מן התקנות וההסכמות אשר הסכמנו עליהם למראית עיני הנבררים הנזכרים שיתחייבו כל הקהלות להבדל ממנו וליסר אותו ולהתנהג עמו באותו צד חומר וענין שיסכימו בו ויודיעום הנבררים, ובזה יוכלו לעשות כל אותן ההוצאות שיראה בעיניהם להוצאת כל הקהלות המשתתפות.

עוד לפי שדבר ההתחברות הנזכר שנתנו הקהלות על לבם והסכימו בו לעשות להצלת קבוצם אין התועלת נמשך בו אלא לפי מה שיהיו האנשים הנבררים על זה הסכמנו שלא יוכל שום אדם בעולם להשתדל להוציא כתב מאת אדו' המלך יר"ה להיות לו יד ושם בנבררים הנזכרים ובכל הענינים הנזכרים ולא לעשות שום השתדלות אחר תוך החמש שנים הן אחריהם אם שיסכימו בהמשכת הזמן אם לא, בקנס חרם ונדוי, ושיבדלו כל הקהלות ממנו, ושינהגו אותו כדין מלשין ומסור ושישתדלו הנבררים על פי הכח הניתן להם להוצאת הקהלות אף אחר עבור זמנם על פי הדרך שיוציאו במה שישתדלו בו תוך זמנם.

עוד הסכמנו: להפיק חותם מאת אדו' המלך יר"ה או ממורשהו יקיים כל הענינים הנזכרים, ושיקנוס כל העובר עליהם אותו קנס שיראה בעיניו.

עוד אנו מבארים: שבכל מקום הנזכר בקונדרס זה להפיק חותם או חותמות מאדו' המלך יר"ה, שהרשות נתונה לנבררים להפיק חותם על ידי עצמם או ע"י זולתם כאשר יראה בעיניהם.

עוד הסכמנו: שהנבררים שישתדלו בכל הענינים הנזכרים ושיהיה כח בידם על כל הענינים הנזכרים ועל פי הענין הנזכר רצוננו בכל הדברים הכוללים לכל קהלות המלכות יהיה על פי דרך זה שיהיו בהם שנים בעד קהלות קטלונייא ושנים בעד קהלות ארגון ואחד בעד קהלות ולינסיאה ואחד בעד קהלות אי מיורקה אם יתרצו ביה ושיהיו השנים מקטלונייא אותם שהסכימו בהם כבר הקהלות שנשתתפו על זה, שהם אנקרשקש שלמה ואחר שיברור עמו והאחד מולינסיאה דון יהודה אלעזר או אותו שיברור תחתיו, ובעד יתר המלכיות אותם שיסכימו הם בברירתם.

עוד: לפי שקהלות ארגון לא נשתתפו עמנו עדיין, על כן הסכמנו שיהיה כח ויכולת ביד השנים מקטלונייא או אחרים במקומם להשתתף עמהם ולהסכים עמהם בכל אותם תנאים ודרכים שיראה בעיניהם שראוי להשתתף עמהם, הן בענין חלוקת ההוצאות איך יתחלקו בינינו, הן בענין ברירת האנשים שישתדלו בענין השתוף הנזכר ודרכיהם ודבר הכח שניתן להם. ובכלל כל מה שיצטרך לעשות לתשלום השתוף הנזכר למראית עיניהם וכל מה שיסכימו עמהם יהיה מקוים ומקובל עלינו ועל כל המשתתפים עמנו.

עוד הסכמנו: שיתחייבו כל הנבררים הנזכרים לפקח ולהשתדל בעניני מנוים וכל הענינים המוטלים עליהם ולא יוכלו להקל מעליהם את עול סובלם אבל יחויבו להשתדל ולהתנהג כפי כונת הקדלות אשר הפקידו להם את כל סבל שמירת קבוצם וענינים בכח השבועה.

עוד הסכמנו: שאם אולי יזדמן לנבררים או לאחד מהם שלא יוכלו לפקח על הענינים המוטלים עליהם, שיוכלו למנות אחרים במקומם ויהיה כחם ככחם באותו ענין או ענינים מיוחדים שיסכימו בידם.

עוד הסכמנו: שיתחיב כל קהל וקהל מהקהלות המשתתפות בזה להחרים חרם באותו נוסח שיתנו להם או שיסכימו בו הנבררים עליהם ועל כל הקהלות המשתתפות בזה ועל כל הגלוים עמהם, להתנהג בכל אותם הנהגות ותקונים ודרכים אשר הסכימו שלוחי הקהלות וכתבום על ספר חתום מידם או בכל מה שיסכימו הנבררים הנזכרים מהכח הנתן להם מהשלוחים הנזכרים ושכל העובר עליהם במזיד יהיה מוחרם ומנודה לכל קהלות הקדש, עד שיתירוהו הנבררים אשר ינהגו במנוים. ומלבד כל אלה הענינים הפרטים אשר נתנו עליהם כח ויכולת לנבררים על פי מה שכתוב למעלה, הסכמנו עוד שאם יראה בעיניהם שיצטרך לקהלות איזה דבר ישינו בו תועלת כללי שיהיה כח ורשות בידם להשתדל ולהוציא חותם או חותמות הצריכים על זה.

עוד הסכמנו: שבכל מה שנתן לנבררים עליו יכולת, יוכלו להוציא כל אותן הוצאות שיצטרכו בדברים ההם למראית עיניהם ויחויבו כל הקהלות המשתתפות בזה לפרוע חלקם בכל מה שיוציאו הם על פי החלוקה אשר ביניהם.

עוד הסכמנו: שלא יתחייבו הנבררים ליתן חשבון מקבלותיהם והוצאותיהם אלא כל אחד למלכותו רצוננו בזה אותם שבקטלונייא לקטלונייא ואותם שבארגון לבני ארגון כפי שיסכימו ביניהם בזה וכן ולינסיאה ומיורקה.

עוד הסכמנו להשתדל בכל מאמצי כח להפיק חותם מאת אדו' המלך יר"ה להתיר כל היהודים אשר תחת ממשלתו שיוכלו להעתיק דירתם ממקומות המלכות ללכת ולדור במקומות הפרשים או בכל מקום שיבחרו כאשר הרשות נתונה מימי קדם ולבטל כל חק כרח הנעשה עד היום.

עוד הסכמנו שתעשה חלוקת ההוצאות רצוננו מה שתפרע קהל ולינסיא' וכן יתר קהלות המלכות הנזכרות למראית עיני דון יהודה אלעזר ואנקרשקש שלמה.

וכל הסכמות הנזכרות וכל הענינים הנזכרים הסכמנו אנו החתומים למטה וקבלנו על עצמנו לקיים מכל זה כל אותן שטרות שיצטרכו בזה אחר שיהיה לנו מזה רשיון מאדו' המלך יר"ה, אבל כתבנו כל זה לזכרון דברים בעלמא מה שהיה בחדש טבת שנת קט"ו לפרט היצירה, וכתבנו וחתמנו זה אנו משה וקרשקש מהכח שיש לנו מזה בשטר עשוי ביד הערכי אנמרק קשטניירא בכ"ה שט'מברי שנת נ"ד לפרט חשבונם ואני יהודה מהכח שיש לי בשטר עשוי ביד הערכי גיללם ברנט די סימו קלינדאש שט'מברי שנת נ"ד לחשבונם והכל שריר וקים.

משה נתן ח'י'. קרשקש שלמה. יהודה אלעזר.

Abstract of Takkanah

The Takkanah is written in the mediaeval poetic-prose style with innumerable references to verses, rendering a translation into another language practically impossible. The introduction recites the woes that have befallen the Jewish people. "Many of faint heart, weak by nature" seeing the implements of torture were unable to withstand the trial and yielded their faith, "crossing over the bridge in their distress". Apparently some of them turned against their former brethren, "bending their bow, making ready their arrow" to shoot by their deadly defamations whomever they pleased. The people of Israel have thus come into hard times. Unless immediate action be taken danger would result to the whole community. It was their duty to take counsel and to save themselves and theirs before the evil fell. Already there were cases of murder and riot here and there, and no effective protest had been raised. If "the communities were made into a single union with a common treasury" they would be in a position to defend themselves, and to bring punishment on such as attacked them. Of what value would their money be to them if there lives were in danger? Since there was no leader taking upon himself the duty of protecting "the sheep of the Lord", the delegates has assembled at the call of the Jewish Community of Barcelona to take counsel in the critical situation.

It was evident that the matter could not be left to the individual communities to deal with separately, as singly they were far too weak for the task. The only means for saving themselves in the situation was to use their money power, and they feared that "if one community will not help the other, we will be unable to bring the money which is annually assessed against us to the treasury of the King" and that "we will appear ungrateful" in his eyes and the eyes of the princes. It was therefore necessary to perfect an organization which should be responsible for the funds. A commission would be appointed to wait on

the King[1] in order to secure his assent to the formation of the union, and the ordinance which were enacted by the council. The commission was to hold office for five years.

They were to strive to obtain from the King the following kindness:

1. That he should intercede with "the King of Nations, the Pope",[2] either in writing or by sending "many and worthy ambassadors", so that he might grant the Jews the following:

a. A decree forbidding the masses of the Christians to fall upon the Jews whenever a natural visitation, such as a plague or famine, occurs.[3] They should rather seek the favor of the Lord by good deeds of charity and kindness, and "not add transgression to their sins" by destroying the Jews whom, according to their own faith, it was their duty to protect.

b. A law among his Decretales forbidding the Christians to make attacks on the Jews because of alleged desecrations of the host.[4] Such a case had occurred shortly before at Seville. The alleged offender should be tried properly and punished if found guilty, but the Pope was to forbid under pain of excommunication any general attack on the Jews. Moreover he was to declare impossible the miracles that were usually alleged with regard to the desecration of the host, and which were relied upon to incite the mob to violence. He was to make clear "that any one who believes in all such things is a heretic against his own faith and laws, which command that they leave us a remnant in the land."

[1] Peter IV (1336–1387). Alfonso IV whom Schorr mentions as the king at the time ceased to reign in 1336.

[2] Innocent VI. (1352–1362).

[3] The suffering of the Jews as a result of the Black Death is indescribable. The persecutions appear to have begun in Catalonia and spread rapidly throughout Europe. See J. E. III, 233.

[4] Accusations in regard to the desecration of the host seem to have begun about the middle of the thirteenth century. The particular outbreak at Seville is not otherwise mentioned to my knowledge.

c. A decree forbidding the placing of the Jewish quarter in a state of seige about the time of Easter. He was to declare it a grievous sin to pain the Jews in any other way than that declared by law, namely that they should remain in their houses behind closed doors "on that day."[1]

d. A limitation on the power of the Inquisition, declaring a Jew to be guilty of heresy only when he denies some tenet of his own faith, as for instance the existence of God, or the Divine origin of the Torah. But no Jew should be subject to the charge of heresy for supporting heretical views of a Christian which are in consonance with the Jewish faith.[2] Indeed such a one might be subject to punishment by the secular power but was to be exempt from the Inquisition. If the Commissioners should find themselves unable to obtain this concession, they were to seek a decree ordering the Inquisition to furnish the accused Jew a statement of the charges against him, and the Jew was to be granted the right of Counsel.[3] Ordinarily the Inquisition defended its denial of both elemental rights of an accused person by expressing the fear that if the accused should be a person of influence he might escape punishment if he were granted these rights, but since there could be no fear of that in the case of Jews, who were all without influence, it was patent injustice to deny them this right.

[1] Jews were forbidden to show themselves on the streets on Good Friday. A church council held at Mayence, in 1259, forbade them to appear on the streets on that day under penalty of a fine of one mark. At another synod at Ashaffenburg, 1292, the Jews were forbidden to come near the doors of their houses or to look out of their windows under pain of a fine of one mark. Another synod held at Prague, 1347, commanded the Jews to keep away from the streets and remain in their homes.

[2] In April 1238, Gregory IX appointed the first inquisitor in Aragon. See Lea, *History of the Inquisition* 1.302.

[3] To defend one accused by the Inquisition was to make oneself liable to complicity in the dread crime of fautorship of heresy. Innocent III in a decretal embodied in the Canon Law, had ordered advocates to lend no aid or counsel to heretics or to understate their case in litigation. Lea, *ibid.* 1.444.

e. Furthermore "let them obtain the further declaration that if a Christian should desire to return a stolen thing which he robbed or took by violence from one of the children of Israel, he shall be obliged to return it to the Jew, either from hand to hand, or through the priests, but he shall not free himself from guilt by returning it to a creditor of the Jew".

"All that has been described above will have to be accomplished through our lord, the King, and his ambassadors, but since we know (best) what our needs are, for "the heart knows its own bitterness" we have decided to send men of wisdom and understanding who will go thither and be in charge of the matter so that they may obtain for us the decrees necessary for the above-mentioned matters in so far as they can obtain them."

2. Furthermore we have decided that "the Commissioners shall have power in regard to all the said matters, and all matters dependent on them or relevant to them, to choose intercessors and agents in any place or kingdom, and to strive to secure any sort of improvement at the hands of our Lord, the King, or any prince or ruler, or any person in the world.

3. Furthermore it was agreed, that while it was impossible to carry out Jewish law, especially where it involved capital punishment, still it were well to "cleanse away every *Malshin* and informer who will be found in any one of the cities or to pour out evil on him in accordance with his wickedness in the judgement of the Commissioners and to make him known as a *Malshin* and drive him forth. Provided however, that the defamation is in regard to a public matter, from which there may result, Heaven forbid, harm to all our people, but not if it is merely a private defamation from which no harm can result."

Similarly the Communities were to have a common fund to oppose those inciting the popular to violence against them since "evil of this sort spreads"... But no notice was to be taken of merely private quarrels between indi-

vidual Jews and Gentiles, if no public harm could result therefrom.

4. Furthermore the Commissioners were to strive to obtain a decision of the Cortes that if "anyone slay a Jew, or try to incite others to violence against them" he should not be given asylum in the territory of any of the nobles of princes, but each one must drive him forth from his land.

5. Whenever the nobles and princes would gather to form a Cortes, the Commissioners were to send their agents to guard the interests of the Communities, or the Commissioners themselves might attend them. This only applied to the Cortes of the whole kingdom.

6. "Furthermore have we agreed that they should pursue this endeavor about the ruling of the Cortes for the five years (of their term)."

7. "Furthermore have we agreed, that whereas the tax-collectors have of late gone beyond all bounds making sorrowful the souls of our brethren in the matter of their extortions and they have bound them in affliction and in iron, so that well-nigh unto death do they cry from their prisons, therefore have we agreed that the Commissioners should endeavor to obtain a decree from the King, forbidding his tax-collectors who rule over our people in the matter of taxes, to cause anyone bodily pain, except in the manner which the King and his ancestors have been in the habit of employing heretofore.

8. "Furthermore have we agreed that the Commissioners shall endeavor to obtain a decree from our lord, the King, that the Communities should not be compelled to pay any salary to the collectors of the tax or *asignaciones* since their pay used to come from the treasury of the King and not from the Communities.

9. "Furthermore they shall endeavor to beg the King to abolish the special tax for the Duke, for, although we are his, there is no need for this tax now. For it was

originally made for the Viscount (of Avila?) at the request of the Communities, and at present there is no need of it.

10. "Furthermore they shall obtain a decree from our King, fortified by an oath, that he should not be able to levy any special tax on the Communities or on any individual Community from this day forth. For when the Communities bring their money to the coffers of the King they find grace in his eyes and in the eyes of his counsellors and princes; also if they are in poor condition our lord, the King, may be generous to them in accordance with his proper custom, which would not be the case if the taxes were assigned.

11. "Since the heralds of our lord, the King, demand redemption money from any Jew whom they meet walking innocently, and if he is unable to redeem himself they cast him 'with thrust on thrust' 'and with the garment they strip also the mantle', therefore we have agreed that the commissioners should obtain and acquire a decree from our lord, the King, similar to the former rule which a few individuals sought and obtained from him now two years past, but which matter was never carried out because they were unable to supply the redemption money.

12. "Furthermore we have agreed that they should seek to alleviate from the communities the burden of the expense of the beds (*or* the staffs) which the courtiers of the King make and demand from us, since it is a heavy burden upon us and there is no gain to the King in hurting us and wasting our money.

13. "Furthermore have we decided to obtain a decree from our lord, the King, promising that he will not appoint any *Comisares* (special investigators) to examine any matter relating to Jews. That can be left to the *Ordinares* (ordinary judges). For the Jews are weak and it is unnecessary to put them in the hands of a hard master; and also in that way (by appointing special investigators) the expenses increase without any gain for the King while the Jews grow poorer. The appointment of the *Comisares*

should only be made at the request of the chosen Commission.

14. "Furthermore they shall endeavor to obtain a decree from the King that no investigation shall be made merely at the request of the *Fiscal* (treasurer or financial agent), unless there is a claimant in the matter, that is to say a *Clamador legitimo*. And even if originally there was a true complainant and he then withdrew the complaint or the demand, the *Fiscal* shall have no right to pursue him in order to make him pay because of the fine. So also the *Fiscal* shall not be able to prevent the *Ordinares* (from carrying out their wish), if they desire to arbitrate the matter, or if they wish to forego it completely in their kindness."

15. The Commissioners shall furthermore obtain a decree that the Scribes and the court-heralds should not be permitted to act as Counsellors in any matter of quarrel or contention or in any complaint which one man has against another. They should act only as is befitting their office and profession.

16. "Furthermore have we agreed to ask our lord, the King, to compel each community of those taking part in this synod to pay the share which is assigned to it in accordance with the division which is made between us. They shall be compelled to pay these expenses in the same manner they are compelled to pay the taxes of the King, whether by punishment of body or property, or by excommunication or ban. The said compulsion is to be executed at the order of the Commissioners and with their agreement and at the expense of the Community which should refuse to pay its portion.

17. "Since not all the communities have joined us till this day, some of them in their letters making it clear that the work is pleasing to them, and that they are ready to come up and take counsel with us, nevertheless did not come at the designated time, perhaps because of unavoidable accidents; while the leaders of others have informed

us that the work is proper in their eyes but they did not succeed in joining us in one federation; while we need to co-operate in regard to some generally useful matters, and it is not fit that we should spend money and that they should get their share of the benefit sitting comfortably in their homes and not giving their share of the expenditure; therefore have we decreed that in regard to all those decrees and customs and ways which the Commissioners will obtain, from which any improvement will come to those Communities (which are not represented), the Commissioners shall obtain a decree from our lord, the King, compelling also the unrepresented Communities to pay their share of the expenses of such affairs in accordance with the advantage which accrues to them in the eyes of the Commissioners.

18. "Furthermore have we agreed that we should obtain a decree from our lord the King, that if any member of any of the Communities whether of those who are taking part in this synod or of those who are not, shall in the view of the Commissioners be guilty of attempting to nullify anything that was undertaken in common or to nullify or lessen the power of the Commissioners or any of the Takkanot or Decisions upon which we have agreed,—all the Communities shall be obliged to separate themselves from him and to punish him and to conduct themselves toward him with all the severity and in the manner in which the Commissioners will agree and of which they will notify them. And in this way they shall be able to raise all the expenses which seem necessary to them for the expenses of the Communities who are combining.

19. "Moreover since the matter of the said confederation which the Communities have taken to their hearts and decided to form for their common safety, can only succeed through the impeccable character of the Commissioners, therefore have we agreed that no person shall attempt to obtain a letter from our lord, the King, giving him a place and a name among these Commissioners, or in any of the said matters. Nor shall one be permitted to make

any other endeavor within the five years or after them, if they should agree to prolong the time, under pain of fine and excommunication, and that all the Communities shall separate themselves from him and shall deal with him as they do with a *Malshin* or an informer.

20. "The Commissioners will continue to work in accordance with the power that is given them to disburse the funds of the communities, even after the expiration of their term in accordance with the way in which they incur them in the work during their term.

21. "Furthermore have we agreed to obtain a decree from our lord, the King, or from his appointees, to establish all the said provisions, and that he should fine the one who transgresses them such a fine as he may think fit.

22. "Furthermore we explain that wherever it is directed in this document that the Commissioners obtain a decree or decrees from our lord, the King, they have the option of obtaining the decree in person or through others as they may see fit.

23. "Furthermore have we decreed that the Commissioners who will take action in all the above-mentioned matters and who will have power in regard to all these matters in accordance with the provision made, that is to say in regard to all matters which are of general importance to all the Communities, shall be (chosen) in the following manner: two for the Communities of Catalonia, two for the Communities of Aragon, one for the Communities of Valencia and one for the Communities of the isle of Majorca, if they will agree to this; and that the two delegates for Catalonia shall be those on whom the Communities uniting on this decision have agreed, namely En Crescas Solomon and anyone whom he choose to act with him; the one from Valencia shall be Don Judah Eleazar, or anyone whom he shall choose in his stead; and for the other kingdoms those upon whom they will agree in their choice.

24. "Moreover since the Communities of Aragon have not yet joined, therefore have we agreed that the two Commissioners from Catalonia or others acting for them shall have power to admit them and to come to an agreement with them regarding all the conditions and ways which appear proper for joining with them, whether in regard to the division of the expenses, as to the manner of sharing it among ourselves, or in regard to the choosing of men who will endeavor to carry out the purpose of the said union, or their manner of action or the power which is given to them, and in general, in regard to everything that will appear to them necessary for the completion of the said union; and all that they agree upon with them shall be established and accepted on us and upon all who join with us.

25. "Furthermore have we agreed that all the Commissioners shall be obliged to look after and to strive to carry out the duty of their office and everything which is placed on them; and they may not lighten their burden but they shall be obliged to strive and to act in accordance with the intentions of the Communities which have entrusted to them under oath all the work of protecting their gathering and their affairs.

26. "Furthermore have we agreed that if it should happen that the Commissioners or any one of them should be unable to look after the affairs which have been placed on them, they may appoint others in their place and then the power of the proxies shall be like that of the principals in that matter or in any special matters which they shall agree to leave in their hands.

27. "Furthermore have we agreed that everyone of the Communities which are hereby uniting, shall issue a *herem*—in such a formula as the Commissioners will decide upon—a *herem* upon themselves and upon all the Communities which are hereby uniting, and upon all who will join them, to act in accordance with all the customs, ordinances and ways which the representatives of the

Communities have agreed upon and have written in a document signed by them, and with whatever the said Commissioners may choose, by the authority which is given them by the said representatives of the Communities; and whoever transgresses these ordinances knowingly shall be declared excommunicate and anathema in all the Holy Communities until the Commissioners who carry out the duties of their office free him. Besides all these detailed matters in which power and authority have been given to the Commissioners in accordance with what has been described above, we have furthermore agreed that if they think that the Communities require something through which a general gain may be derived, they shall have the power and the right to strive to obtain a decree or decrees which may be needed for the purpose.

28. "Furthermore have we agreed that wherever power has been granted the Commissioners they may incur whatever expenditures they may deem necessary for these things, and the Communities who unite on this shall be obliged to pay their portion of whatever they have spent in accordance with the division among them.

29. "Furthermore have we agreed that the Commissioners shall be obliged to give an account of their receipts and expenditures only to their several kingdoms, that is to say, the representatives of Catalonia shall report to the Communities of Catalonia and those of Aragon to the people of Aragon in accordance with what they agree among themselves, similarly for Valencia and Majorca.

30. "Furthermore have we agreed that we shall strive with all our power to obtain a decree from our lord, the King, to permit the Jews who live under his government to remove from the places belonging to the King to those under the knights or wherever they may choose, just as this right was given them of yore and that he should set at naught the decree which is in existence at the present day.

"To all the said decrees and all the said matters have we, the undersigned, agreed and we have taken it upon our-

selves to execute all the documents in this regard which will be necessary after we have obtained permission from our lord, the King, but we have written all this merely as a record of proceedings which took place in the month of *Tebet* of the year 5115 of the Creation.

We have written and signed this we Moses and Crescas by the authority given us for this in a document executed by the notary, En Marco Castañero on the twenty-fifth of September of the year 1354, Common Era, and I, Judah, by the authority conferred upon me by a document, executed by the notary, Guillem Berndt de Ximo, on the first day of September, 1354, Common Era. And all is firm and established."

Moses Nathan Haii
Crescas Solomon
Judah Eleazar.

CHAPTER XIII

SYNOD OF CASTILIAN JEWS OF 1432

The statutes adopted at Valladolid in 1432 have come down to us in a Paris manuscript. Their language is Spanish, but they are written in Hebrew characters. In 1869 Kayserling gave an abstract of their contents in the *Jahrbuch fuer die Geschichte der Juden* (4.265 ff.). In 1885–6 the distinguished Spanish scholar, Don Francisco Fernández y González published the text with a translation into modern Spanish and with notes in the *Boletin* of the Madrid Academy, VII (1885) 145-189, 275-305, 395-413; VIII (1886) 10-27. The work was reprinted in 1886 under the title "*Ordenamiento formado por los Procuradores des las aljamas Hebreas*, Valladolid, 1432." In the *Revue des Etudes Juives* 13.187 ff. Isidore Loeb gave a description of the Spanish Jewish communities based on the material found in these statutes. An abstract of his article was published in Hebrew, in *Ha-Asif*, 3, 133–147. In the following pages an abstract of the document is given. A full translation is as yet impossible since the document requires editing by a Romance scholar.

While the text is thus still in a poor condition, the book is nevertheless of great importance as throwing light on the pass to which the Spanish Jewish communities had come in the first part of the fifteenth century. It is a picture far from pleasing that we have before us, but not the less interesting or important for that reason.

The first lines are missing in the manuscript but they must have read approximately as indicated.

[1] While the editor possessed a considerable knowledge ofHebrew, nevertheless his information on rabbinic works was not quite sufficient for the needs of the work. Thus he translates the expression בעשור אחרון "the last tenth of the month" instead of "the last ten days of the month." He could not be expected to recognize the Talmudic expression המשחרר עבדו עובר בעשה) and so he is led to read בעשר for בעשה, which makes no sense.

(At the command of the King, the Rabbi of the Court, Don Abraham, invited the communities) to send trusted men from their Communities who would keep the paths of righteousness and with whom he could take "sweet counsel". And the Communities did as he commanded and some of them sent letters to the said Rabbi confirming and accepting everything which he would command and ordain, and some sent trusted representatives to represent them. The princes of the people were gathered together, the people of the God of Abraham, in the Court of our lord, the King, in the city of Valladolid. And in the last ten[1] days of the month of *Iyyar* of this, the above-mentioned year 5192, in the said city of Valladolid, we, the undersigned, were present in the great synagogue which is in the Jewish Quarter of the Community of Valladolid, when there gathered in the presence of the honored prince, Don Abraham, the Rabbi of the Court of our lord, the King, various scholars who came from various communities, worthy men clothed with authority, certified by credentials from the different communities of the domain of our lord, the King, which they presented before us, the undersigned. And there were present also some worthy men who go to the Court of our lord, the King. They held meetings among themselves in regard to a Takkanah which they decided was to deal with certain definite subjects and other matters, which are for the service of the Creator, the glory of the holy Torah, the service of the King, and the success and welfare of the Communities. This ordinance was agreed upon unanimously without anyone dissenting and it was completed on the first day of *Sivan* of the above-mentioned year, 5192. The text of the Takkanah follows immediately on our signatures.

In witness whereof we have signed our names to it:
Isaac Ha-Kohen b. Joseph Ha-Kohen b. Crispini
Baruch b. Abraham ibn Sahl.

[1] This expression which seems to have puzzled the editor of the document is very common in Judaeo-Spanish writings, cf. *Kerem Hemer* II.27.

In previous times there were ordained in the holy communities of the dominion of our lord) the King, general Takkanot and regulations which were to be observed by all the Communities and those who were at their head, so that they might establish Takkanot and choose proper paths in which all the people of the Communities might walk, thus was the Torah established on its proper foundation and every Community was settled in quiet. For some time past, however, for various reasons no general Takkanah has been enacted by means of which the Communities might be led, as a result of which much harm has befallen the communities and there has come about disorder in their management. Therefore have we, the aforementioned delegates by virtue of the authority given by our lord, the King to the worthy Rabbi, Don Abraham, and by virtue of the authority given is by our Sages to attend to the arrangements of our own Communities and by the authority given us by the Communities, we have established this ordinance and agreement which we have divided into five chapters as will be explained, the following being the text:

I.

"This is the gate of the Lord, the righteous shall enter into it."[1]

The first of our decisions and the beginning of our Takkanot has for its object the maintenance of the students of our Torah. For it is upon the Torah that the world is founded, as the Sages say. "On three things the world stands, on the Torah, on Divine Service, and on kindly acts".[2] Whereas we saw that the hands of the students of the Torah have slackened in most places, and that they obtain their livelihood only with extreme pain, and that for this reason the pupils are becoming constantly fewer, and even the children of the primary school are idle in many places, because their parents cannot afford to pay the salary of those who might

[1] Ps. 118.20
[2] Abot 1.5

teach them the Torah, and the Torah would almost have been forgotten in Israel because of these reasons, and in order to "bring back the crown to its ancient glory"[1] and that there may be found scholars in Israel and that the students may increase in the Communities; therefore do we ordain that each of the Communities of the whole kingdom of Castile shall be obliged to establish and provide a Voluntary Fund for *Talmud Torah* in the following manner. For every head of big cattle which is slaughtered as *kasher* among them and for them, they should pay for Talmud Torah five *maravedis*; for every calf or heifer which weighs one hundred pounds, which are equivalent to twenty-five *arreldes*, they should pay for *Talmud Torah* two *maravedis*; and for each head of small cattle a wether, a sheep, a he-goat or a she-goat, they should pay one *maravedi*. For each small goat or sheep, weighing less than four *arreldes* they should pay for *Talmud Torah* one *coronado*. If it weigh four *arreldes* or more, they should pay five *pence*. For each jug of wine which is sold at retail—(if more than five jars are sold at one time, it may be considered wholesale),—they should pay to the Talmud Torah three *pence* per jar. If over five jars are sold whether to individual Jews or to Jewish muleteers and traders they should pay to the said *Talmud Torah* two *dinars*. But of the wine which is sold to Christians they should pay half a *penny* for each jar, to the *Talmud Torah*.

Whoever makes a wedding shall pay ten *maravedis* within the wedding week. For a circumcision they shall pay to the *Talmud Torah* ten *maravedis* as soon as the child reaches the stage when he is not to be considered any longer a *nefel*.[2] If one of either sex dies above the age of ten years, his or her heirs shall give to the *Talmud Torah* the dress which was worn above the under-shirt, or ten *maravedis* as the heirs may choose. Whoever gives more than the above amount deserves a blessing. The tax is to be paid

[1] *Yoma* 69a.

[2] A child ceases to be a *Nefel* when it has demonstrated by living thirty days that it is likely to live and that it has had full embryonic development. See *Sabbath* 135b.

in the coins current or in use at the time of payment. The above-mentioned payments of the bridegroom or of one celebrating a circumcision or in the case of death or not to be collected from such as derive their maintenance from charity or such as are fit to receive charity in the opinion of the treasurers who be appointed over these taxes.

We ordain that each community shall be obliged to assemble by announcement according to their custom, ten days before the expiration of the terms of the farmers of the wine and meat tax. And they shall not disband until they have let out the tax for the *Talmud Torah* Fund or they shall appoint a trustee or trustees into whose hands they may bring the money so that the trustee or trustees may hold it in trust until the tax is farmed out. Each Community shall be obliged every year to choose two treasurers over the said *Talmud Torah* Fund, so that through their hands there may be accomplished whatever the Rabbi of the Court may ordain or command in regard to it.

In those places where there is no tax on meat and wine we ordain that within thirty days after the day when this ordinance is shown to them, they shall assemble by announcement as has been mentioned and establish an ordinance in regard to the *Talmud Torah* in accordance with what has been set forth above.

Moreover do we ordain that in those places where there are less than ten families, there shall be established the said *Talmud Torah* Fund as in all the other communities in the manner described. That amount they shall be obliged to deliver each year so long as this ordinance is in force to the treasurers of the Community to whom they pay ordinary taxes and they shall take a receipt for the amount which they have given.

In those places where there are ten families or more, although they pay taxes to another community, they shall be obliged to name among themselves a treasurer in whose hands they shall entrust the *Talmud Torah* Fund and they shall keep the money until the Rabbi of the Court shall give orders as to how it should be used so that the said

Talmud Torah Fund may be in general use throughout the Communities of the Kingdom of Castile.

And we ordain that neither a community nor any individual shall be authorized to use the funds of the *Talmud Torah*, even a single *maravedi* of it, for any need that may arise whether public or private, either as a loan or in any other way, but that all the money should rather be in cash ready to be used for the purpose which the Rabbi of the Court shall order.

But in those places where there are Rabbis, teaching the Torah appointed over the Community they may give and pay to the said Rabbi or to the pupil their maintenance from the said *Talmud Torah* Fund. And if there is any money left of the *Talmud Torah* Fund after the above mentioned amounts have been paid, they shall be kept for use as the Rabbi of the Court will ordain as has been said.

Moreover we ordain that if the Rabbi of the Court see fit he may ordain that such communities as have a Rabbi shall pay him his salary in a different manner and should not use for that purpose the funds of the *Talmud Torah*. They shall then pay the salary of the Rabbi from the taxes on meat and wine or from the income of the *Hakdesh*[1] or rents from houses and the like if they have any.

PRIMARY SCHOOL TEACHERS

Every community of fifteen families shall maintain a proper teacher for the children of primary school age who shall instruct them in Scripture. They shall allow him a reasonable salary according to his needs. The fathers of the children shall pay the teacher each according to their means, and if the amount paid by the fathers is insufficient for the maintenance of the teacher, the community shall be obliged to pay the remainder necessary for his livelihood.

[1] This term which in the Talmud denotes Temple property was used in the Middle Ages of funds left for charitable purposes. As used in this ordinance the term seems to refer only to endowed funds.

RABBIS

A community having forty families or more shall be obliged to endeavor so far as possible, to maintain among themselves a Rabbi who will teach them *Halakot* and *Aggadot*. The community must maintain him reasonably. His salary shall be paid from the income of the tax on meat and wine and the income from the *Hakdesh*, if there is any, or from the *Talmud Torah* Fund, so that he should not have to beg his livelihood from any of the leaders of the Community, so that he may reprove them and guide them in all things which pertain to the service of the Creator, blessed be He. If the community and the Rabbi can come to no agreement as to the amount of the salary they shall be obliged to give him the income of the *Talmud Torah* of the locality and then to increase the amount as may be ordered by the Rabbi of the Court.

TALMUDIC ACADEMY

Moreover we ordain that each Rabbi shall maintain a Talmudical academy where those desirous of learning may study the *Halaka*. He shall lecture at such hours as the Rabbis are wont to lecture.

NUMBER OF PUPILS PER TEACHER

Whereas according to the Talmudic law no teacher is permitted to teach more than twenty-five pupils,[2] unless he have an assistant, therefore we ordain that no teacher shall teach Scriptures to more than twenty-five children,

[1] The most important function of the Rabbi is that of teaching. It is evident from section 2 that the judges were other men and that only in certain cases was the Rabbi called upon to act with them.

[2] Cf. *Baba Batra* 21. This ordinance follows the view of Maimonides (*Yad*, Laws of *Talmud Torah* 2.5.) and of R. Jonah who is quoted in *Nimmuke Joseph*, *ad loc.* that the numbers permitted in the Talmud to individual teachers and to assistants were maximum numbers; *Tosafot* ad loc. and *Asheri* differ from this opinion and hold that one teacher may be used for any number of pupils less than forty, an assistant was required if the number exceed forty but was less than fifty, and two teachers were required for fifty or more.

but that if he have an assistant he may teach forty in accordance with the law of the Talmud.[1] A community having fifty children shall be obliged to maintain two teachers; the same law applied to any number above forty.

PRAYERS

Whereas prayer is a most important part of the service of the Lord and we have learned by tradition that the verse "to serve him with all your heart"[2] refers to prayers;[3] and our Sages said furthermore, One's prayer is only heard when it is recited in the Synagogue;[4] and that prayer with the community is the more acceptable;[5] moreover it is impossible to recite the *Kaddish* or *Kedushah* except in the presence of ten people,[6] so that R. Gamaliel freed his slave in order to complete the necessary quorum of ten although he who frees his servant transgresses a positive commandment;[7] and whereas there are places where although there are ten adult males, yet they do not gather in order to pray publicly; therefore do we ordain that any community having ten families or more shall establish a place for prayers. They shall either buy or hire a house for that purpose so that they may not interrupt the prayers even for a single day. And we ordain that in those places which have twenty families or less a fine shall be imposed on anyone who fails to come to public prayers in the morning or evening unless he is prevented by some valid reason.

Moreover we ordain that they should take heed in the synagogue that no one lift his hand against his neighbor and that each son of Israel beware lest his heart be exalted to smite and to insult his neighbor. Therefore we ordain that if any Jew strike his neighbor in the Synagogue or in a place fixed for prayer, whether he strike him in the face or hit him with his fist, or catch him by the hair of

[1] Ibid.
[2] Deut. 11.13.
[3] *Ta'anit* 2a.
[4] *Berakot* 6a.
[5] Comp. *Berakot* 8a.
[6] *Shulhan Aruk, Orah Hayyim* 55.1.
[7] *Gittin* 38b. (In our texts the story is told of R. Eliezer).

his head or of his beard, or draw a weapon in the Synagogue wounding his neighbor in the hand or in any other part of the body,[1] he shall pay for each time he assaulted him two hundred *maravedis*, one half of which shall be given to the *Talmud Torah* Fund and the other half shall be distributed among the poor as charity, or in such a way as the judges shall designate. If he wounded his neighbor with a knife, a stone, or any other implement that can cause death, he shall pay in each instance three hundred *maravedis*, which shall be distributed in the manner described. These punishments are to be understood to be only the penalties for the profanation of the Synagogue.

II. THE ELECTION OF JUDGES AND OTHER OFFICERS

Whereas the number of scholars has become small, and those who are fit to act as judges have become few, so that there are only a few Communities in the kingdom which have a court of three who are fit to act as judges in these times in accordance with Talmudic law; and whereas our forefathers were constrained because of this to go beyond the law of the Talmud in their ordinances concerning the election of judges,[2] and since unless there are authorized judges in each city to try claims and complaints and to punish transgressors, there will be chaos so that neither men nor women will be safe, for the world depends on three things: on justice, on truth, and on peace,[3] and where there is no true Torah, there is no peace; therefore have we ordained and agreed that in each community they shall choose judges to decide their cases as has been said and the members of the community shall accept them as judges. But they shall choose the most fit and the most worthy that can be found in the locality for the Torah often warns us in regard to this

[1] Comp. Takkanah of R. Tam on this subject above, Chapter IV, Text A.

[2] Any arrangement for the popular election of judges was of necessity non-Talmudic. In Palestine the authorization to act as judge had to come either from the Patriarch or the Synhedrion; in Babylonia, it usually was given by the *Resh Galuta* although the academies seem also to have claimed the right to confer this power.

[3] *Abot* 1.18.

matter therefore do we ordain that any community which at present has no judges shall be obliged to assemble in the usual meeting place according to the customary announcement, within ten days from the day when this Takkanah is read. In those places where there are judges, they shall be obliged to gather within ten days before the completion of the term of the incumbent judges, and elect new judges for the coming year. They shall follow this rule every year so long as this ordinance shall be in force. An anathema shall be pronounced binding all those who are choosing the judges to consider only what will be pleasing to "Him who dwelleth in Heaven...." The electors shall choose those who are most worthy and fit in the community for this office and the same refers to all other officers, such as investigators and treasurers and those who look into the public needs and any other officers which the Community will choose. As soon as the *herem* has been pronounced they shall begin to discuss the matter and if they agree so much the better. If they do not agree they shall deliberate for the following three days and no one shall leave the meeting except for the purpose of eating or drinking or some other essential matter. If they do not agree within three days they shall remain for eight days, day and night, in that place, none of them leaving it except to eat or drink or for some necessary reason as described. If they cannot come to any agreement within the said time they shall notify the Rabbi of the Court who shall select judges, and the community and their judges shall be obliged to carry out the order of the Rabbi of the Court. This procedure shall be followed in the election of judges or of any other officials; and such official shall hold his position for the whole year. [1]

We further ordain that no officer may appoint any judge or any other officer without the consent of the community, or the majority thereof, and that the proposed officer must be mentioned by name (before the electorate). Any

[1] For a similar procedure see the responsum of R. Meir b. Baruch, quoted in Res. Maim. *Kinyan* 27.

election held in any other way than that prescribed is hereby declared void.

DUTIES AND POWERS OF JUDGES

We further ordain that whoever is appointed in each community shall have the power as long as this Takkanah is in effect, to judge any dispute, contentions or quarrels which may arise between man and man, according to Talmudic law. They shall have the power of imposing fines and punishment with the consent of the Rabbi and three of the most worthy of the "Best Men" of the city.[2 1] They shall however keep in mind the privilege granted by our lord, the King, to the said Rabbi of the Court, Don Abraham. Moreover anyone who feels himself too severly dealt with may appeal to the said Rabbi for redress.

QUALIFICATION OF JUDGES

We further ordain that the judges of the community must not be related to each other[1] .....

RULES OF PROCEDURE

We further ordain that the judges shall fix a place for trying cases three days in the week, and that they shall observe the rules concerning judges, that they shall compel the defendant to come before them and do justice to the plaintiff. The litigants shall be obliged to come on the summons of the judges; and should either fail to appear he shall pay to the Charity Fund for the first offense a gold piece, for the second offense three gold pieces, and for the third offense ten gold pieces, beside such punishment as the judges may inflict on him.

CASES WHERE JUDGES ARE LITIGANTS

We further ordain that if any Jew or Jewess have a complaint against any judge or any judge has a case against

[1] This would establish a court of seven in criminal cases. Courts of seven were not otherwise unknown in Jewisn law, see *Sanhedrin* 11.1. See also above p. 156, note 2.

[2] Cf. Jer. *Sanhedrin* 21c.

any member of the community, that judge shall be obliged to appear with his opposing litigant before one of the judges, his colleagues. If there is no other judge in the Community, the Community shall be obliged to provide for them one or more judges within three days to try the case. All the parties shall be obliged to carry out the orders of the judge or judges. The same procedure shall be followed if the judges are relatives of one of the litigants or friends or enemies to one of them in the sense of Talmudic law. No judge shall be permitted to try any case in which he, persnonally, or one of his relatives is involved unless the litigant has accepted him in the prescribed manner.[1]

JUDGES TO HAVE NO JURISDICTION OVER TAX-LISTS

We further ordain that no judge shall be empowered to interfere by means of his judicial authority in the matter of the tax-lists or in the distribution of the taxes, but he may try cases arising among the members of the community in regard to taxes.

SPECIAL JUDGES

We ordain that if a Community feel that they do not want to entrust the differences arising among them to their judges, and there are differences among them requiring the attention of another judge, and they petition the Rabbi of the Court to send them judges, declaring that to be the desire of the majority, counting both by persons and by wealth, and if it appear to the Rabbi to be an emergency which if not met will result in harm to the community, he shall choose a God-fearing man, for the time for which the Community request him, and the Community shall be obliged to accept his decisions. But if the majority of the community do not make such a petition to the Rabbi of the Court, he shall not send any judge against the will of the Community.

APPEALS

Regarding appeals, every judge shall be obliged to grant an appeal to the Rabbi of the Court within reasonable

[1] See *Sanhedrin* 3.2.

time to the party demanding it. The appellant shall give guarantees that he will cover the expenses incurred and shall take an oath that he makes the appeal because he feels himself misjudged, and not merely to delay the execution of justice.

WRITTEN BRIEFS

Since if one of the litigants were permitted to write down his grievance and bring them to Court, he would probably write more than is neccessary, perhaps even indulging in insults, which would result in more expenses and disputes, and whereas those who instruct others to plead in certain ways are included under the rule that he who teaches another what to plead injures the community and he who teaches them to plead falsely is a sinner,[1] therefore have we decreed that no litigant shall submit written briefs to the Court without having received permission from the local judge. Even in cases in which a brief is permitted it must be in keeping with propriety, without injurious words or insults against anyone, and must be signed by the person who drew it up, and the one presenting the brief shall state under oath that it is the signature of the person who drew it up and that no one else drew it up for him. Any brief presented in any other way will not be accepted by the judge. We further ordain that no one shall give a litigant any arguments or causes to plead, unless he is given permission in writing by the Court to do so. Whoever will without permission of the Court, help a litigant who is not a relative of his, with arguments, shall lose his stipend from the *Talmud Torah* Fund if he is a scholar; and if the pleadings suggested were false, he shall be proclaimed an evil counsellor. If he is a man who does not receive any stipend he shall be fined as much as appear just to the Court and to the Rabbi.

TAKING TESTIMONY AGAINST JUDGES.

Every communal scribe shall be obliged to record and take the evidence which anyone may give against the

[1] Compare *Abot* 1.8. See especially commentary of Maimonides, and also *Ketubot* 52b, 86a.

dayyan or against anyone else who is not involved in the suit which is pending before the *dayyan* (?) between the day when the suit is brought and the third day following including the whole of the latter, and if the defendant is not willing to make a reply within the given time, the suit is to be decided in favor of the plaintiff as not contested and he should write in the record that the defendant was not willing to make any reply, and hence he shall be obliged to summon the *dayyan* or the party against whom he the said evidence has been given, and he shall have another witness with him on each of the said three days. If the scribe disregard the foregoing he shall pay as a fine twenty *maravedis* for each time he disregards it.

BODILY APPREHENSION.

We ordain that no judge shall order a Jew or Jewess to be seized bodily, except by order in writing signed by himself and witnesses; and that when the crime for which the person is apprehended is not defamation or a capital crime, the reason shall be stated in the writ.

SERVING A WRIT

We further ordain that if anyone obtains a writ from the Rabbi of the Court and does not present it to the opposing party within fifty days in the presence of witnesses, or place it in front of his door in the presence of one of the adult members of the family or in the Synagogue at the morning prayers in the presence of these who are praying he shall no longer be permitted to serve it or make any use of it, and it shall cease to have any value.

III. DEFAMATIONS[1]

No Jew or Jewess shall bring his or her neighbor whether a Jew or Jewess before any judge, ecclesiastic or secular, who is not of our faith, although such a judge should decide in accordance with the law of Israel, unless it be a matter

[1] Compare the Takkanah of R. Tam above p. 153.

of payment of taxes or imposts or coinage or other rights of our lord, the King, or of our lady, the Queen, or the money or rights of the Church or of a lord or lady of a place. Whoever transgresses this law is to be declared anathema and excommunicated, and no one shall have any dealings with him; he shall not be buried among Jews, his bread shall be like the bread of a Samaritan, his wine shall be considered like that of libations to idols. For each transgression he shall pay 1000 *maravedis* to the Jew who suffered by the defamation or to whomever the Rabbi of the Court will order that it should be paid. But if any Jew refuses to come to a Jewish Court after being summoned three times, the Rabbi and the Judges of the Community may give the plaintiff permission to apply for redress to the Gentile Courts.

Any Jew or Jewess defaming another Jew or Jewess in such a way that harm may result to the Jew or Jewess, even though no Gentile is present, shall be fined for each time he or she used defamatory language, 100 *maravedis*, (half to be paid to charity and half to whomever the judges designate), and shall be imprisoned for ten days. If any harm result from the defamation, the guilty one shall be compelled to pay in addition to the above, all the damages that have been suffered because of the defamation .If the defamatory speech was made in the presence of Gentiles the punishment is imprisonment for twenty days and a fine of 200 *maravedis*. If any harm result in this case the defamer shall be compelled in addition to undergoing the said punishments, to make recompense for all damage suffered through the defamation and he shall be excommunicated for ten days. If any bodily harm results to the defamed because of the words of the defamer, the offender shall receive corporal punishment to the extent ordered by the Rabbi.

If any Jew or Jewess is alleged to have caused the apprehension of another or the seizure of his property by some Gentile man or woman, but the matter is not substantiated by witnesses being merely supported by the

weight of circumstantial evidence,[1] the judge shall have the duty with the counsel of the Rabbi, to order the defamer apprehended and punished bodily in accordance with what seems proper to the scholars so far as they may (legally).

If the alleged defamation is confirmed by one witnesses as well as incriminating circumstances, or if he confesses to it, there shall be branded on his brow the word *Malshin*.[2]

If the crime is proven through the testimony of two witneseses, the defamed shall receive for the first offense one hundred lashes, and be driven from the city in accordance with the decision of the Rabbi and the judges and the leaders of the city above-mentioned. If he is guilty of a third offense, as established by the testimony of two proper witnesses, the Rabbi of the Court may in accordance with Jewish law, order his death through the judiciary of our lord, the King.

If he cannot be put to death, or branded on the brow, or flogged in the above-mentioned manner, they shall denounce him in every place as an informer and a defamer so that all Jews may keep aloof from him. He shall be declared in all Israel as the "Man of Belial, the man of blood", no one shall permit him to marry his daughter nor shall he be accepted in the Congregation of Israel for any religious matter so long as he resists the execution of justice as here ordained.

This punishment shall not apply to one who gives information to our lord, the King, for his benefit even though that bring harm on some Jew. Such a one is not to be called either a defamer or an informer since it is the duty of all Jews to look after the service of the King.

If however the informer of the King makes false accusations against another Jew, he is to be punished severely because he lied to the King, and he is a false witness and

[1] For the acceptance of circumstantial evidence see Takkanot ascribed to R. Tam above p. 178.

[2] The Jews in Spain seem to have taken over from their neighbors the use of cruel and unusual punishments, see Res. *Asheri* 17.1.

a defamer. For this reason every possible punishment should be inflicted upon him.

APPEAL TO JEWISH COURTS FOR SAFETY

If any Jew or Jewess demands from any judge or judges of the Communities that he set a truce between him and any other Jew or Jewess, one or many, the judge or judges shall be obliged to compel the person or persons to grant the truce in order to put a temporary end to the quarrels. Each party shall be expected to keep the agreement and whoever breaks it shall be liable for suit according to the laws of the kingdom with the advice of the Rabbi. If the judge or judges refuse to interfere in the matter, the petitioner shall have the right to proceed before the Gentile courts.

FORCED BETROTHALS OR MARRIAGES

No one shall have the right to use a writing from our lord, the King, or our lady, the Queen, or any other lord or lady, or any other person, whether by persuasion or intimidation, to compel a Jewess to accept a Jew, or to compel a Jew to acept a Jewess, in betrothal or marriage. Whoever transgresses this ordinance shall be declared anathema and excommunicate, his bread the bread of Samaritans, and his wine the wine of libations, he shall not be buried among Jews, and he shall pay a fine of five thousand *maravedis* according to the order of the Rabbi of the Court.

Whereas it happens at times that some enter the houses of Jews perforce with the help of Gentiles and compel daughters of Israel to accept money or valuables as *Kiddushin*, or they force a ring on a woman's finger, and there thus arise cases of doubtful marriage, and whereas all of this represents a laxity in the matter of marriage, and there has always been an ordinance among the Castilian communities in regard to this, therefore do we ordain that no marriage shall be performed except in the presence of ten

adult Israelites,[1] one of them being a relative of the bride. If the father or the brother of the bride is in the neighborhood they must be present to give their consent. The minister of the Congregation must recite the benedictions of the marriage. Whoever will transgress this law, shall be declared anathema and excommunicate and incapacitated to act as witness. He shall receive one hundred lashes and pay a fine of ten thousand *maravedi* as the Rabbi of the Court will order.

No one is permitted to act as a witness to a marriage that is not performed in accordance with the above-mentioned ordinance, even though the bride has become engaged to the man with the consent of her father. If anyone knowing the intentions of the bridegroom acts as witness in violation of this ordinance, and his guilt be made certain, he shall be punished in the same way as the bridegroom himself.

INTIMIDATION OF JUDGES

No Jew or Jewess shall be permitted to bring a Gentile man or woman in order to threaten or intimidate a judge,[2] an investigator or any other officer of the Jewish community. If a Gentile man or woman threatens a Jewish community on behalf of any Jew or Jewess, who deny that the Gentile came at their request, it shall be the duty of the Jew or Jewess to see to it that the Gentile abandon his threat in such a way that no harm may befall any individual or the Community. If he refuses to obey and prevent the Gentile from carrying out his threat and draws any advantage from the said threat or intimidation on the part of the Gentile, it shall be looked upon as if proven by two witnesses that he brought the Gentile to help him. If the Community or any member of it has to undertake any expenditure because of the threat, the judges acting on the advice of the Rabbi, may take of the property of the transgressor and give it to whomever they please. If the Gentiles are in-

[1] See pp. 302 and 307.

[2] Compare Takkanah of R. Tam, p. 153.

fluential persons and prevent the execution of justice against the transgressor, the judges of the locality shall be obliged to bring the matter to the attention of the Rabbi of the Court so that he may see that justice is done. If, however, the person on whose account the Gentile interfered requests the Gentile to desist, he shall be liable to no punishment.

THE SALE OF WINE

Any Jew or Jewess who makes wine of Gentiles[1] in such manner that it may be used for Jewish custom shall pay all the taxes, duties and imposts that are laid on the wine of any Jew. Moreover no Jew may give the Gentile any information which will lead him to bring any pressure whether by threat or intimidation on the Jew. Whoever transgresses this ordinance is to be considered as defamer and a *malshin*, and he shall be subject to all the rules which the Community may make in regard to the preparation of the wine of Gentiles.

Every community of ten families or more shall establish a tavern where *kasher* wine may be obtained both for themselves and for travellers. As for those communities which already have ordinances providing for men to be in charge of the wine sale, they should follow their ordinances. As for those which do not have such ordinances we ordain that within eight days after this Takkanah is read to them, they shall call a meeting by announcement in the place of prayer, and they shall make provision for one or more men to be in charge of the wine sale and the manner in which the office shall be connected. If they cannot agree within three days, they shall appoint one man from the class of wine sellers and another for the class of of wine buyers. These shall declare under oath that they will loyally see to it that the wine is sold in accordance with the custom of the place and at the price at which it

[1] The expression use here, "He who purifies Gentile wine" is taken from the *mishna*, *Aboda Zara* 4.8. It means "preparing the wine of Gentiles in such a way that Jews may use it". I do not quite follow either González's or Kayserling's interpretation of this passage.

is sold to Christians adding to that the amount paid in taxes for the *Talmud Torah* Fund. If they see that the Jewish wine involves greater expenditures that the Christian wine, they shall allow in just that measure the price of the Jewish wine to be raised. They shall declare under oath that they will carry out their duties with no personal interest and that if there will be need of a third party to decide between them they will take one and act according to his decision. This regulation they shall observe each year during the duration of this Takkanah.

No person of the children of Israel shall have the right to avail himself of any letter of grace or privilege or other order whether written or oral of our lord, the King, or our lady, the Queen, of any other lord or lady, to have himself appointed Rabbi or to obtain any agreement or emolument from any of the communities,[1] or to be appointed Clerk, or *Shohet* or minister or teacher or messenger of the Court; or to obtain any other office in the gift of the communities, without the consent of the communites or the community which the office is to be held. Nor may he win the agreement of the communities or the appointment through threats or intimidation by Gentiles or any one Gentile. Whoever transgresses this ordinance shall be declared anathema and excommunicated.

This rule shall not apply to our worthy Rabbi, Don Abraham, because it is the desire of the communities that he should be the highest judge and he accepted the position at the instance of the Rabbis and at the call of the Communities. Whoever is at present in possession of such a letter of grace, shall present it to the Rabbi of the Court for examination within the next six months so that those of them which can be executed should be carried out. During these six months if he desires to carry out the functions of his office by the authority of the letter of the King he may do so. His salary shall be determined by the said Rabbi of the Court.

Whereas there are some who appoint officials like the Clerk and the *Shohet* without the consent of the Communities,

[1] See above p. 154.

we ordain that no one so appointed shall have the right to execute the duties of his office without the permission of the Community or the majority of it.

No Jew may engage a Christian servant permanently in his home whether with pay or without pay. For serious scandals have arisen as a result of this practice and in ancient times there was an ordinance against it.

IV. TAXES AND SERVICE

No Jew or Jewess shall obtain any letter from the King, or Queen or any lord or lady or any other influential person by which he or she may be freed paying the taxes which the Communities may impose. Neither shall anyone try to gain any confirmation of such privilege nor shall anyone request anyone who does not belong to our faith, to obtain such a privilege for him or her whether by persuasion or intimidation. Neither shall one avail oneself of such an offer on the part of anyone, nor may such an offer be accepted by anyone, whether an individual or a community. In general no one shall take advantage of any letter obtained in the above manner to free himself from taxes, imposts, loans or any other demands which our lord, the King, may make on the Communities.

In the case of taxes levied upon separate classes or groups of Jews, the same rules are to apply as in the case of ordinary taxes, unless the individual under consideration was exempted at the time of the levying of the tax. If any community farms out its taxes, the tax-farmer cannot free anyone from payment of taxes who was not exempt at the time of the farming of the tax.

If any community makes an agreement with one to reduce his taxes because of intimidation or fear or because of an exemption-decree, the agreement is null and void, and if any attempt to avoid payment after the Rabbi decides that it shall be made, the person involved is to be declared anathema and excommunicate.

Any written documents in regard to this matter must be shown to the Rabbi of the Court within six months so that he may act on them as he sees fit.

Whereas Don Meir Alguades, of sainted memory, was for many years a defender of his people, it is proper to show appreciation of his services, and not to appear ungrateful and whereas in the ordinances which were passed both before and after the said R. Meir became the chief judge, he and his descendants were granted exemption from all the taxes which the Community might have to pay, and whereas that privilege is still in force, and further whereas, his widow, Donna Bathsheba, is a virtuous woman and has lived so as to honor his memory, and aside from that, the wife of a scholar is even after his death to be accorded some of the privileges due a scholar,[1] and whereas his daughter, Donna Luna, the widow of the worthy Don Meir Alfachar, is a virtuous woman; therefore we ordain that neither of these widows shall be compelled to pay taxes by any community or by any individual in the Commuity, nor shall they be compelled to give any pledge for such payments; the aforementioned Rabbi of the Court Don Abraham, will decide what their status is to be.

If any Community feels itself aggrieved in the matter of the division of the taxes, that commuity shall send a mission to the Rabbi of the Court, who will take counsel in regard to the matters with two other Rabbis of his choice and if he finds that the grievances as demonstrated by the mission are just, he shall see that they are redressed.

RIGHT OF REDRESS FOR INDIVIDUALS

Whereas certain communities have made very rigid ordinances providing that all the expenses and taxes of the Community should be distributed among all the inhabitants and that everyone without exception should be obliged to pay and no one is permitted to enjoy his right to be free from taxes and as the tax-assessors often cause serious and evident wrongs, therefore we ordain that henceforth no such ordinance shall be made; and in regard to those already made, we ordain that a general meeting be held of all the members of the Community in

[1] *Aboda Zara* 39a.

accordance with the custom, so that they may release the *herem* (repeal the ordinance) and be free to make such ordinance in regard to exemption from taxes as the Rabbi of the city may suggest, or if here should not be any in that city, according to the suggestion of the Rabbi of the nearest city.

No Community shall henceforth have the right to forbid any individual to make known such grievances as he may have against it. If the Community and the individual come to an agreement to lay their differences before a judge of the city or of the neighborhood, the matter shall so be settled. If, however, they cannot agree on a judge of the city or the neighborhood, the matter shall be referred to the Rabbi of the Court. The said Rabbi shall settle the differences and may remove the tax-assessor and order another appointed in his place who will see to it that the agreements are observed. But since great harm may result to the communities if all those feeling themselves aggrieved should withhold their payments of taxes, therefore it is ordained that each man must pay his share in accordance with the tax assessment, but that if the judge finds that one has a just grievance he shall order the restitution of the surplus or it may be used in the payment of other taxes than those assessed against him in the first list.

Any Jew or Jewess, claiming exemption from taxes because of the alleged privileges granted to the communities of Valderas and Badajoz, or because of an alleged privilege granted in regard to the Jews of Astorga by the Church and Bishop of that city, any Jew or Jewess claiming exemption from taxes because of these privileges, whether they be inhabitants of those communities or not, shall be obliged to present proof of their privileges to the Rabbi of the Court or his agent; otherwise the privilege shall be considered void and they shall be considered liable to pay in the same fashion as any other of the people. But those who have made agreements with the Communities because at the time their privileges were in doubt, shall pay in accordance with the agreements so long as they are in force.

WIDOWS AND ORPHANS.

Any widow, or male or female orphan who is not married, and possesses less than four hundred *maravedi* shall be exempt from payment of taxes. If any of them have more than the said amount, only the surplus over that sum shall be taxed. The same rule shall apply to the lame and the crippled.

TAXES ON MEAT AND WINE

Every community shall henceforth establish the custom of imposing taxes on meat and wine. Every community is authorized to make such ordinances in accordance with their custom and fix definite rates. If they do not agree on the imposts within thirty days from the day of their meeting, they shall send representatives to the Rabbi of the Court, who will ordain how the Community shall act in regard to the taxes, and they must act in accordance with his orders. In places where no tax on wine has yet been established, they shall not be obliged to impose one if the majority of the people, counting both by numbers and by wealth, are opposed to it.

TAX EVADERS

A stringent *herem* of ten maledictions shall be pronounced in all the communities on the Sabbath between *Rosh Ha-Shanah* and *Yom Kippur* of each year,[1] at the morning prayer, in the presence of all those who are praying, while the Torah is in the Ark, against any Jew who will attempt to evade the payment of taxes, or who will help others to evade taxes which they are legally obliged to pay.

ANNOUNCEMENT OF COMMUNITY MEETINGS

In many Communities there are officers like investigators and community leaders who publish the announcemnts

[1] Compare the statement in *Maharil* (Laws of Penitence) that R. Jacob Molin was very much pained when a Jew announced a *herem* in the synagogue during the ten days between *Rosh Ha-Shanah* and *Yom Kippur*.

in such an astute manner that the public meeting is only sparcely attended, only those being invited whom they choose, and they ordain whatever they please to ordain, As a result of this practice many scandals have arisen, and moreover this is contrary to the law of the Talmud which provides that an ordinance is not binding unless accepted by the whole or the majority of a community.[1] We, therefore ordain that any ordinance passed in the aforesaid manner shall be void. If it be an ordinance levying taxes there must be present a majority of the tax-payers of the past three tax lists, nearest the time of the ordinance, as well as a majority by wealth of those who would pay the proposed tax. But whereas the Communities have the custom of making their ordinances by public announcement and it will be difficult for them to wait until the whole or the larger part of the Community gather, and as at times matters require an immediate solution and permit of no dealay, therefore we ordain: 1. That in regard to such things as can cause no harm to the community if action on them is delayed till the Sabbath, no ordinance may be made except in the manner mentioned above. And in all places where public prayers are held, they shall announce publicly when the Torah is in the ark, to as many as are gathered into the Synagogue or Synagogues, that a gathering will be held in such and such a place and such and such ordinances will be discussed, so that each man may take it to his heart and think of the proposed meeting and guard his rights, or waive them freely. Those who are absent from the meeting will then learn what was said, and they must accept whatever is ordained by those present even if they were not a majority. 2. If it is a matter which cannot be delayed till the following Sabbath, but can wait till the next Monday or Thursday, they shall make announcement in the abovementioned manner on one of those days, and if notice of the proposed meeting was brought to those present on those days, all that is ordained at the meeting shall be valid although no announcement was made on

[1] See above p. 50.

the Sabbath. 3. If it is an urgent matter that cannot wait for the following Monday or Thursday, they shall announce the meeting at the regular morning or evening service. 4. If it is so urgent a matter that it cannot be delayed until announcement is made at the services, the Clerk of the Community shall go the houses of the majority of the members of the Community and of the taxpayers and inform them that the said meeting must take place. They shall wait with the discussion until everyone in the Community shall have had time to arrive at the place of the meeting. They may then discuss that it is wanted to ordain and whatever they ordain is valid. Some Communities have an ordinance providing that no act is valid unless passed by the majority of the Community; they shall act in accordance with their custom. But those communities which have elected officers to look after the welfare of the Communities shall act in accordance with this Takkanah.

No one shall be permitted to pronounce any *herem* until the subject has been deliberated upon and discussed so that one may be certain that the matter is being done with the consent of the whole or a majority of the Community.

V. REGARDING CLOTHING [1]

No woman except those unmarried or a bride in the first year of her marriage, shall wear costly dresses of gold-cloth, or olive colored material or fine linen or silk, or of fine wool. Neither shall they wear on their dresses trimmings of velvet or brocade or olive-colored cloth. Nor shall they wear a golden brooch nor one of pearls, nor a string of pearls on the forehead, nor dresses with trails on the ground more than one third of a *vara* in measure, nor fringed Moorish garments, nor coats with high collars, nor cloth of a high reddish color, nor a skirt of *bermeia* thread, except as for the skirt and stockings, nor shall they make wide sleeves on the Moorish garments of more than

[1] Compare similar Takkanot in Italy above p. 285, in Germany p. 228.

two palms in width, but they may wear jewelry like silver brooches and silver belts provided that there is not more than four ounces of silver on any of them.

No son of Israel of the age of fifteen or more shall wear any cloak of gold-thread, olive colored material or silk, or any cloak trimmed with gold or olive-colored material or silk, nor a cloak with rich trimmings nor with trimmings of olive colored or gold cloth.

This prohibition does not include the clothers worn at a time of festivity or at the reception of a lord or a lady, nor at balls or similar social occasions.

Because of the diversity of custom among the Communities in regard to the wearing apparel, we find it impracticable to make a general ordinance which shall provide for all the details that ought to be included, and we therefore ordain that each Community shall make such ordinances on the subject so long as this Ordinance endures, as will keep before their minds that we are in Dispersion because of our sins, and if they desire to establish more rigorous rules than this they have the power to do so.

DINNERS AND FESTIVITIES

Whereas at the time of betrothals and weddings and the birth of a child and other seasons of rejoicing, many spend lavish sums, we agree that every community shall make such ordinances on this subject as are compatible with its needs and position. Therefore we ordain that from the day when this Takkanah will be read in any Community having no ordinance dealing with this matter, a meeting shall be held within thirty days to adopt ordinances on this subject in the spirit described in this Ordinance.

CONCLUSION.

We agree that this Takkanah shall be established over all the Holy Communities of our lord, the King, and over each one of them just as it has been drawn the first day of *Sivan* of this year and for the coming ten years. All the communities shall act in accordance with it. Every one

of these communities shall similarly act in accordance with it from the day on which it is read to them and announced until the end of the said ten successive years. No man shall raise objections to it either in whole or in part. Whoever transgresses or causes another to transgress or raises any objection so as to annul it as a whole or in part shall be declared anathema and excommunicate in accordance with our judgement since this ordinance was established by the authority given the worthy Rabbi Don Abraham.

ADDITIONAL NOTE A

Talmudic Law Regarding Competition

Perhaps it may be well to summarize here the Talmudic sources which underlie the institutions of the *Herem Ha-yishshub*. R. Judah b. Ilai, (a *Tanna* of the end of the second century), saint as he was, appears to have had little knowledge of business methods. He forbade any merchant to undersell his neighbor lest he "accustom the buyers to come to him". (*Baba Mezia* 4.5.) The majority of the Sages saw nothing unfair in such methods of competition. The general opinion of the Rabbis was that one "may open a store next to that of his neighbor and the other may not object since the owner may say to him, You may do what you will in your property, and I do what I please in my property." The principle of free competition is thus established in Tannaitic literature, i. e. for Palestine.

R. Huna, who lived in Babylonia about the middle of the third century differed from the opinion laid down by the majority of the *Tannaim* (*Baba Batra* 21b). He held that if a man owned and operated a mill he might prevent anyone else in his immediate vicinity from beginning to operate another mill. The attempt of the succeeding generations of the Amoraim to find a Tannaitic basis for the statement of R. Huna, cannot be said to have been successful. The distinction between the sources adduced to support R. Huna, and the statement of R. Huna, is well pointed out by R. Meir Ha-Levi in his commentary to the passage (*Yad Ramah*, ad loc.). Indeed, it must have been the feeling that the stifling of competition was unjust that led the vast majority of the codifiers to decide against R. Huna. (See *Bet Yosef*, *Hoshen Mishpat*, 156).

It is not unlikely that conditions in Babylonia, or at least in Sura, were such that R. Huna's position was justified by fact if not by precedent. This becomes even more probable when we consider the words of R. Huna's namesake, who lived several generations later, R. Huna b. R. Joshua, who lays down the rule that while one may not prevent one's neighbor from competing with one, one may object to competition by an immigrant from another city. We have in this statement a principle that approaches the *herem ha-yishshub* in acting as a preventive measure against people from other towns but not against people of the same city. Rashi finds in this statement of the second R. Huna the basis for the institution of the *herem ha-yishshub*. (See RMR 77, but comp. commentary *loc. cit.*)

The extent to which such laws reflect local conditions can be seen from the difficulty which R. Joseph ibn Migas found in comprehending the law. Harking back to the point of view of the Palestinian *Tannaim*

of the second century, he does not see why one should take into consideration only feelings of the merchant and not that of the consumer. If the traders undersell one another they may be harming one another, but the consuming public reap the advantage of lower prices. Why, he asks, should the law defend the rights of the selling class rather than that of the buying class? He decided therefore that if new-comers may be prevented from selling their wares in competition with established houses, only when the newcomers do *not* offer inducements to the buyers, but where the wares of the newcomers is superior to that of the older firms, or is sold at a lower price, the Sages will not prevent them from selling their wares. For the law must defend the rights of the buyers as well as that of the sellers. If, however, trade in entirely in Jewish hands R. Joseph ibn Migas holds that it is forbidden for a newcomer to undersell a fellow-Jew, and therefore all competition is prohibited. In this view he is followed by R. Meir ha-Levi (see commentaries of Ibn Migas and R. Meir Ha-Levi ad loc.).

On the other hand, the French and German commentators found no difficulty here at all. R. Eliezer b. Joel Ha-Levi (*Mordecai, Baba Batra* II. 516) decides with R. Huna, the elder, that all competition between Jews is forbidden. But, he inadvertently, reveals his true reason for the defense of the seller. "If the *Gentile* cannot come to the house of R. except by passing the house of S. (the newcomer) then R. (the original shopkeeper) may object in accordance with the view of R. Huna."

B. The Legal Status of Women in German Jewry.

This is one of the cases which illustrates the rule that according "to the changes that take place in life, the law changes". But as Jewish law is judge-made rather than statutory, its changes are not as clearly defined as they would be by a legislature. The law laid down in the Talmud that women are not responsible for damages worked very well in Talmudic times. It applied not only to cases of assault but as Rashi points out also to other cases. This is made evident by the statement of the Pharisees (*Yadaim* 4.7) that a master cannot be held responsible for the damage done by his slave in setting fire to the field of his neighbor. Doubtless the same view would have been held regarding a person's responsibility for the actions of his wife. And since married women were almost as devoid of property rights as slaves, there could be no question of their paying out of their own estates. In a society where women's commercial transactions were limited this might work well. But when the Jewish women in Germany became the "noble women who engage in trade" (RMP 958) (See also Guedemann I, 230; *Raben* 115; RMR 57; HOS 250; 254) it was obviously impossible to free them from all responsibility which lay on others in matters of buying and selling goods. Business could not go on if the wife were permitted to buy and refuse to pay, while the husband sat carelessly by, denying any responsibility for her acts. R. Gershom still maintains the view of the Babylonian Geonim that

a woman cannot be brought to Court in a civil suit (*Or Zarua, Baba Kamma* 8.530). He makes the single qualification that if she came into the possession of property wherein her husband has no rights whatever, she may be compelled to pay therefrom. That exception is implied in the Talmud, but the case is so rare as to be negligible. It remained for R. Eliezer b. Nathan and his grandson, R. Eliezer b. Joel Ha-Levi to establish the new principle of women's responsibility "Nowadays," says R. Eliezer the Younger, "unless women will be compelled to come to court and defend themselves (in civil suits like men) you will destroy the means of livelihood" for those who are compelled to deal with them, and ultimately their own. He proposes that if "she claims that she destroyed what she received or was negligent with it, the husband shall not be held responsible, but if she claims that she spent it or used it for her personal needs, I think that the husband is responsible." Like his grandfather, he finds support for his views in a responsum of R. Kalonymos, perhaps the scholar of Lucca , but he admits that the weight of the authority of the Babylonian Geonim is against him. R. Baruch b. Samuel of Mayence suggests another manner of differentiating between the litigation in which women are to be held responsible and those in which they are to be free. His principle is the same as that of our Takkanah (p. 201, §21), namely that while women cannot be held responsible for assault since they are freed from that responsibility in the Mishna, they may be held for all other obligations. (*Mordecai, Baba Kamma* 8.111. See Cassel, *Geonim Kadmonim* 107, and Mueller, *Mafteah* p. 8-9).

Another more important theory was that women engaged in trade were really agents for their husbands who were therefore responsible for them not as husbands for wives but as principals for agents. This would amount in practical law to the same principle as that of the ordinance and that of R. Baruch b. Samuel. It is ascribed to R. Abraham b. Nahman (*Mordecai*, ed. Riva *Baba Kamma* 8.108-9).

R. Meir b. Baruch denied the validity of all these theories and strongly insisted on the Talmudic law that a woman cannot be brought to court or compelled to take an oath while she is married. (RMC 35, *Mordecai Baba Kamma* 8.99). The force of conditions proved the stronger however, and the general view of the German Rabbis is rather with his opponents.

It is interesting to note how a change of conditions made the passage in *Rabiah* quite unintelligible to R. Joseph Colon. He says (Res. 193) that R. Eliezer could not have had in mind any large claims but only those "which a woman is likely to incur in the household expenses as the payment for food and similar things".

It may be proper to note here too, that the higher economic status of women in Germany and partly in France was the cause of their recognition in legal matters. We have seen (above p. 178) that women were admitted as witnesses in some cases. We hear of one Rabbi who allowed his daughters to be counted as members of the quorum in

order to recite the Grace (*Tosafot Berakot 45b*). Some held that women might act as judges (*Tosafot Niddah 50a*). R. Meir b. Baruch himself in a special case, permitted women to be called up to the Torah publicly (RMP 108). This movement had already been started by the laws regulating marriage and divorce which were introduced by R. Gershom and re-enforced by communal ordinances of various kinds. They all show an attempt to minimize the legal inferiority of women. There can be no doubt that the movement toward "women's rights", for such it was, had its origin and compelling force largely in the fact that women began to occupy a prominent posisition in the economic world.

C. Appellate Jurisdiction in Talmutic Law.

We read (*Sanhedrin* 31b) "When R. Dimi came from Palestine, he said in the name of R. Johanan, 'If one man summons another to Court and one of the litigants says, let us try our case here, and the other says, let us get the place of Assembly they must go to the place of Assembly." Translated into modern terminology, R. Dimi in the name of R. Johanan laid down the rule, that if one of the litigants refused to try his case before a local court, but insisted on going before a superior Court, then the other must go before the superior Court. R. Eleazar is reported to have objected to this decision of R. Johanan. He said, "O Master, shall he who sues for one mina, be compelled to waste one mina after the other in trying to recover it?" R. Eleazar thought that it were better that they should be tried by the local court. Thus Babli.

In the Palestinian Talmud, the matter is related somewhat differently. We read there (Jer. *Sanhedrin* 21a), "There were two men who had a litigation in Antioch. One of them said to the other, 'I will obey the decision of R. Johanan'." In other words, he wanted to take the case directly to the higher court. R. Johanan refused to hear it, however. He held that the case be tried by the local judges, and that if they were in doubt they might send to him. But he would not answer the litigants directly. "R. Eleazar said, If one of the litigants wants to try his suit in Tiberias and the other in Sepphoris, we try it in Tiberias." The traditions of the two Talmudim are not quite contradictory for it may well be that R. Johanan who was at first inclined to have the suit brought before him, finally felt the force of R. Eleazar's argument in favor of the local courts as given in Babli. The Talmud of Jerusalem merely adds that one must try one's case before the local court. If the two courts are as near each other as Sepphoris and Tiberias, indeed, the case should come before the higher court. It is only when it would necessitate the incurriug of expenses, that R. Eleazar denies the rights of the litigant to take the matter to the highest court at once. That this explanation is true can be seen from the Babylonian Talmud, where R. Safra is reported to have said *in the name of R. Johanan*, that if two people stand opposed to each other at a trial and one says, let us try our case here, and the other says, let us go to the house of Assembly, it must be tried in their own city. We are to un-

derstand then that Babli and Jerushalmi give each an incomplete story which must be supplemented from the other. R. Safra and R. Dimi do not contradict each other, but rather R. Safra tells us, what R. Dimi omits, that R. Johanan accepted the view of his pupil. There is therefore no need of omitting with R. Solomon Luria the words "in the name of R. Johanan" in the statement of R. Safra.

The matter thus far is clear. It became confused, however, when Amemar laid down the rule, that one must go to the higher court. It is inconceivable that Amemar should have meant that a Babylonian defendant might compel another Babylonian to come to some Palestinian court for trial. That would indeed be an injustice. Amemar in all likelihood, merely said that if one of the litigants wanted to go before a central Babylonian court such as that of the Exilarch or the Academies, his fellow would have to go before those courts rather than before the local courts. (His use of the term בית הועד merely reflects the fact that he quotes a Palestain source). It is not clear whether R. Ashi so understood Amemar's statement, but he objected to it, because it seemed to contradict the view of R. Eleazar. Amemar did not quote in support of his statement the view of R. Johanan, since as we have seen, R. Johanan had adopted the decision of R. Eleazar. It is not clear whether the final decision in the Talmud is an amended statement by Amemar himself or the attempt of a later authority to reconcile the opposing points of view. The decision is that the plaintiff can compel the defendant to go to the higher court but not vice versa.

The weakness of this decision was plainly seen by the French commentators. If one were suing a very busy man and insisted on taking his case to a distant court, it might well be that the defendant would prefer to pay even an unjust claim rather than incur the heavy expenses and loss of time of a distant trial (*Asheri Baba Kamma* 112b). Even more difficult is the statement of Mar Ukba in the name of Samuel (*Baba Kamma* 112b) that a defendant might refuse to answer a summons of a local court on the pleas that he would be tried only by the Great Beth Din. If Mar Ukba meant the great Beth Din in Palestine, his decision would have meant the end of justice in Babylonia. For every defendant might insist on being tried in Palestine. Since only in important cases would it pay the plaintiff to undertake the expenditure involved in a distant suit, the defendant would be at an advantage. Mar Ukba's words apply therefore only to Babylonian courts of and are directly contradictory to the views set forth as the final decision of the Talmud above. The attempts to reconcile the two statements by R. Tam and by R. Solomon ibn Adret (*ad loc.*) are not quite acceptable to the later authorities (see *Asheri ad loc.*). But we still do not see why either Mar Ukba or Amemar should give such sweeping rights to either party at a litigation.

While these discussions were going on, time was solving the problems and bringing about a common sense decision. A Takkanah was established

(p. 190) which provides that one must stand for trial if summoned at home or in the nearest place where there was a regular court. This view was enunciated by R. Samson b. Abraham of Sens as being the custom of his own city (*Or Zarua Baba Kamma* 436, Res. Maim. *Shofetim* 2), but later it seems to have been understood as binding on all the communities (*Shilte Ha-Gibborim Sanhedrin* III, beg., but comp. *Or Zarua, loc. cit.*, where case decided by R. Samson is definitely declared to be exceptional. Long before him, in the days of R. Eliezer b. Nathan (*Raben*, Prague 113a), we find it however as the prevalent custom. R. Joseph Colon refers to the custom as that of the Germans (Res. 14 and 15). The Takkanah referred to by R. Meir b. Baruch seems to be identical with the one before us. He says, (*Mordecai, Sanhedrin* 3.707), "Thus have I seen in the ordinance of the communities: If one of the litigants wants to send the case to a distant judge, and there is a scholar near at hand, and if the judges see that he intends merely to cause his opponent unnecessary expense, they should not listen to him (but compel him to stand trial in his own city)".

We have a decision in this matter from the communities of Worms, Speyer and Mayence. It reads, "If a person sues another and summons him before the communities, he may say, I will not be tried outside of my city. This is only true however in case of a claim for the payment of money. But if the complaint is about matters of assault or denunciation before the Gentiles, the plaintiff may summon him to appear in Court before any of the Communities, (other than their home city)... The defendant may then choose from among them the court before which he would be tried". (RMB, p. 319. Compare *Ez Hayyim* חמשה קונטריסין p. 96b.) It is quite natural that a person of influence would be so powerful as to overawe the judges of his native community. A defendant against such a man might demand a change of venue. This would naturally be the case in litigations about assault and denunciation. Hence the distinction. Several precedents are mentioned by R. Samuel b. Elhanan (*Mordecai Sanhedrin* 3 end, *note*; RMP 546; RMB p. 318) in the case where a defendant said to the plaintiff, "How can I stand trial in your city when you are feared by the judges and I will be unable to give my arguments?" R. Samuel permits the case to go before another court and even mentions R. Samson of Sens who permitted his son-in-law to decline to answer a suit in his own city of Troyes because his opponents were too powerful.

(The words מצאתי בתקנות רבנו גרשם "I have found the following in the ordinances of R. Gershom" which are printed in RMB before this passage, are obviously a copyist's error. Firstly this is a responsum and not a Takkanah, and secondly the authorities are all later by some centuries than R. Gershom).

THE ORIGIN OF THE CUSTOM OF INTERRUPTING THE PRAYERS.

After this volume was in press, I received copies of the two excellent works on post-Talmudic Jurisprudence by Rabbi Simhah Asaf of Palestine: בתי דינין וסדריהם and העונשין אחרי חתימת התלמוד. Naturally there are a number of points of contact between those works and the present volume which deals with the same period, though from a different angle. There are a number of statements in the books which will have to be revised in view of the new material made available here. Thus the statement (in בתי דינין וסדריהם, p. 27) that the ordinance limiting the right of interrupting the prayers, was established by R. Tam, is based on the title given the Takkanot of R. Gershom in the Prague edition of the Responsa of R. Meir b. Baruch (no. 153). In view of the fact that such early authors as R. Meir b. Baruch and R. Aaron of Lunel quote the list of Takkanot as R. Gershom's, there can be no doubt that it is by him (See, above, pp. 113, 114).

Again Rabbi Asaf agrees with Aptowitzer in holding that the custom of interrupting the prayers was known in Palestine in Talmudic times (בתי דינין וסדריהם p. 26). But that interpretation of the passage in the Jerushalmi has been shown above to be erroneous (p. 16, note 1). On the other hand, Rabbi Asaf quotes a reference to the custom in the work of the Spanish codifier R. Samuel ha-Sardi (thirteenth century which escaped my notice, but he is doubtless right in holding that the words there given are merely a quotation of the passage in the *Ittur* (referred to above, p. 17)

Rabbi Asaf also cites a Geonic responsum, from a collection which was prepared for publication by the late Professor Halper, dealing with the matter of interrupting the prayers. The responsum definitely states that the custom was unknown in Babylonia.

LIST OF ABBREVIATIONS

JQR—Jewish Quarterly Review
REJ—Revue des Etudes Juives
MGWJ—*Monatsschrift fuer Geschichte und Wissenschaft des Judentums.*
JJLG—*Jahrbuch der Juedisch-Literarischen Gesellschaft*
JGJ—*Jahrbuch fuer die Geschichte der Juden*
RFL—Mueller, *Teshubot Hakme Zarfat ve-Lotir*
HOS—Responsa of R. Hayyim Or Zarua.
RMP—Responsa of R. Meir b. Baruch, ed. Prague
RMC—Responsa of R. Meir b. Baruch, ed. Cremona
RMB—Responsa of R. Meir b. Baruch, ed. Berlin.
RMR—Responsa of R. Meir b. Baruch, ed. Rabinowitz, Lemberg.
TRG—Takkanot of R. Gershom.
Mord.—*Mordecai.*
Guedemann—M. Guedemann, *Geschichte der Erziehungswesen und der Cultur der Abendlaendischen Juden.*

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